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ASTOR, LENOX AND
TILDEN FOUNDATIONS

Statesman Edition — Vol. VIII

Charles Sumner

HIS COMPLETE WORKS

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With Introduction

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CONTENTS OF VOLUME VIII.

PAGE

REVISION AND CONSOLIDATION OF THE NATIONAL STATUTES. Resolution and Speech in the Senate, December 12, 1861 1

DENIAL OF PATENTS TO COLORED INVENTORS. Resolution and Remarks in the Senate, December 16, 1861 . . 6

THE NATIONAL ARMIES AND FUGITIVE SLAVES. Resolution and Remarks in the Senate, December 18, 1861 . . 7

EXPULSION OF TRUSTEN POLK, OF MISSOURI. Resolution and Remarks in the Senate, December 18, 1861 . . 12

EMANCIPATION AND THE PRESIDENT. Letter to Governor Andrew, of Massachusetts, December 27, 1861 . . 14

THE TRENT CASE, AND MARITIME RIGHTS. Speech in the Senate, on the Surrender of Mason and Slidell, Rebel Agents, taken from the British Mail Steamer Trent, January 9, 1862. With Appendix. 15

OFFICE OF SENATOR, AND ITS INCOMPATIBILITY WITH OTHER OFFICE. Remarks in the Senate, on the Case of General Lane, of Kansas, January 13, 1862 105

EXPULSION OF JESSE D. BRIGHT, OF INDIANA. Speeches in the Senate, January 21 and February 4, 1862 . . . 114

ANSWER OF A WITNESS CRIMINATING HIMSELF. Remarks in the Senate, on the Bill relating to Witnesses before Committees, January 22, 1862 152

LIMITATION OF DEBATE IN THE SENATE. Remarks in the Senate, on a Five Minutes' Rule, January 27 and 29, 1862 155

PAGE

INDUSTRIAL EXHIBITION AT LONDON. Speech in the Senate, on the Joint Resolution providing for Representation there, January 31, 1862 157

ORDER IN BUSINESS: EACH QUESTION BY ITSELF. Remarks in the Senate, February 6, 1862 161

STATE REBELLION, STATE SUICIDE; EMANCIPATION AND RECONSTRUCTION. Resolutions in the Senate, February 11, 1862. With Appendix 163

TREASURY NOTES A LEGAL TENDER. Speech in the Senate, on the Clause making Treasury Notes a Legal Tender, February 13, 1862 181

LOYALTY A QUALIFICATION REQUIRED IN A SENATOR. Speeches in the Senate, February 18 and 26, 1862 . 208

HELP FOR MEXICO AGAINST FOREIGN INTERVENTION. Report from the Committee of Foreign Relations upon the Draught of a Convention with Mexico, February 19, 1862 . 227

NO RECOGNITION OF THE FUGITIVE SLAVE BILL. Motion and Remarks in the Senate, February 25, 1862 . . 238

OUR GERMAN FELLOW-CITIZENS, AND A TRUE RECONSTRUCTION. Letter to the German Republican Central Committee of New York, February 25, 1862 241

STATE SUICIDE AND EMANCIPATION. Letter to a Public Meeting at the Cooper Institute, New York, March 6, 1862 243

REMOVAL OF DISQUALIFICATION OF COLOR IN CARRYING THE MAILS. Bill in the Senate, March 18, 1862, and Incidents 247

RANSOM OF SLAVES AT THE NATIONAL CAPITAL. Speech in the Senate, on the Bill for the Abolition of Slavery in the District of Columbia, March 31, 1862 251

REBEL BARBARITIES, AND THE BARBARISM OF SLAVERY. Resolution and Remarks in the Senate, April 1, 1862 . 301

PAGE

Testimony of Colored Persons in the District of Columbia. Remarks in the Senate, on the Emancipation Bill, April 3, 1862 304

Independence of Hayti and Liberia. Speech in the Senate, on the Bill to authorize the Appointment of Diplomatic Representatives to the Republics of Hayti and Liberia, April 23, 1862 307

Final Suppression of the Slave Trade. Speech in the Senate, on the Treaty with Great Britain, April 24, 1862 . 336

Enforcement of Emancipation in the District. Resolution and Remarks in the Senate, April 28, 1862 . . 349

Conduct of our Generals towards Fugitive Slaves. Speech in the Senate, on a Resolution of Inquiry, May 1, 1862 351

No Names of Victories over Fellow-Citizens on Regimental Colors. Resolution in the Senate, May 8, 1862 361

Bounty Lands for Soldiers out of Real Estate of Rebels. Resolution in the Senate, May 12, 1862 . 363

Testimony of Colored Persons in Judicial Proceedings for Confiscation and Emancipation. Resolution in the Senate, May 12, and Remarks, June 28, 1862 . 364

The Late Hon. Goldsmith F. Bailey, Representative from Massachusetts. Speech in the Senate, on his Death, May 15, 1862 366

Use of Parchment in Legislative Proceedings. Resolution and Speech in the Senate, on the Enrolment of Bills, May 16, 1862 372

REVISION AND CONSOLIDATION OF THE NATIONAL STATUTES

Resolution and Speech in the Senate, December 12, 1861.

REVISION AND CONSOLIDATION OF THE NATIONAL STATUTES.

Resolution and Speech in the Senate, December 12, 1861.

April 8, 1852, during his first session in the Senate, Mr. Sumner brought forward a resolution for a revision and consolidation of the national statutes, which was duly referred to the Committee on the Judiciary.[1] Though the resolution attracted attention at the time, the committee did nothing.

Early in the next Congress, December 14, 1853, he presented the same resolution a second time, which was duly referred,[2] and again neglected.

In the succeeding Congress, February 11, 1856, he offered the same resolution a third time,[3] and with no better success than before.

Absence from the Senate and protracted disability prevented the renewal of this effort until the administration of President Lincoln, who was induced to make a recommendation on the subject in his annual message of December 3, 1861.[4] Mr. Sumner followed, December 12th, with his oft-repeated resolution: —

"*Resolved*, That the Committee on the Judiciary be directed to consider the expediency of providing by law for the appointment of commissioners to revise the public statutes of the United States, to simplify their language, to correct their incongruities, to supply their deficiencies, to arrange them in order, to reduce them to one connected text, and to report them thus improved to Congress for its final action, to the end that the public statutes, which all are presumed to know, may be in such form as to be more within the apprehension of all."

Of this he spoke.

1 Senate Journal, 32d Cong. 1st Sess., p. 339.
2 Ibid., 33d Cong. 1st Sess., p. 43.
3 Ibid., 34th Cong. 1st Sess., p. 100.
4 Congressional Globe, 37th Cong. 2d Sess., Appendix, p. 2.

MR. PRESIDENT, — It is now nearly ten years, since, on first entering this Chamber, I had the honor of presenting this identical resolution. Several times afterwards, at succeeding sessions, I brought it forward; but there was no action in regard to it, either by the Committee on the Judiciary, to which it was referred, or by the Senate. At last we have a positive recommendation from the President in his Annual Message, calling attention to the necessity of a revision of our statutes, and of reducing them to a connected text. I desire to take advantage of that recommendation, and to revive the proposition which ten years ago I first introduced.

Something in earnest, Sir, must be done. The ancient Roman laws, when first codified, were so cumbersome that they made a load for several camels. If this cannot be said of our statutes, nobody will deny that they are cumbersome, swelling to at least eleven or twelve heavy volumes, besides being most expensive. They are to be found in few public libraries, and very rarely in private libraries. They ought to be in every public library, and also in the offices of lawyers throughout the country. That can be only by reducing them in size so that they will form a single volume, which is entirely practicable, — thus rendering them easy to read and cheap to buy.

I have reason to believe, Sir, that such a work would be agreeable to the people. I am not without assurance that the people value such reading. Certainly I am justified in this conclusion, when I think of my own State; for it is within my knowledge that the statutes of Massachusetts, reduced to a single volume, as they now are,

have, during a very brief period, been purchased by the people at large to the extent of more than ten thousand copies.

I hope, Sir, there will be no objection founded on the condition of the country. I do not forget the old saying, that the laws are silent in the midst of arms; but I would have our Republic show by example that such is not always the case. I am sure we can do nothing better for the honor of the Administration that is ours. Indeed, should we not all look with increased pride upon our country, most cherished when most in peril, if, while dealing with a fearful Rebellion, Congress turned aside to the edification of the people in objects that are useful, among which I place that I now propose? It will be something, if, through the din of war, this work of peace proceeds, changing the national statutes into a harmonious text, and making them accessible to all.

The resolution was agreed to.

This was followed, January 28, 1862, by a bill, introduced by Mr. Sumner, for the revision and consolidation of the statutes of the United States, which was referred to the Committee on the Judiciary. May 31, the Committee, on motion of its chairman [Mr. TRUMBULL], was discharged from the further consideration of the resolution. At the same time the bill was postponed to the first Monday in December, and expired with the Congress.[1]

December 15, 1863, Mr. Sumner renewed his original resolution on the subject, and on the 23d introduced another bill with the same object, on which Mr. Trumbull, from the Committee, reported adversely, June 28, 1864.[2]

January 5, 1866, Mr. Sumner renewed his effort by a bill, which was also referred to the Judiciary Committee. February 7, Mr. Poland, from the Committee, reported the bill favorably. April 9,

[1] Senate Journal, 37th Cong 2d Sess., pp. 147, 549.
[2] Ibid., 38th Cong. 1st Sess., pp 28, 47, 667.

it was considered in the Senate and passed without debate, substantially as drawn and introduced by Mr. Sumner. In the original bill the salaries of the commissioners were $3,000 each. On the report of the Committee, they were changed to $5,000 each. June 22 the bill passed the House of Representatives without amendment, and was approved by the President June 27.[1]

Under this Act, President Johnson appointed as commissioners Hon. Caleb Cushing of Massachusetts, Hon. Charles P. James of Ohio, and Hon. William Johnston of Pennsylvania.

The period of three years, within which the revision and consolidation were to be completed, having expired, leaving the work undone, a supplementary Act of Congress was passed,[2] continuing the original Act, and under it President Grant appointed as commissioners Hon. Benjamin Vaughan Abbott of New York, Hon. Charles P. James of Ohio, and Hon. Victor C. Barringer of North Carolina.

[1] Statutes at Large, Vol. XIV. pp. 74, 75.
[2] Act of May 4, 1870: Ibid., Vol. XVI. p. 96.

DENIAL OF PATENTS TO COLORED INVENTORS.

Resolution and Remarks in the Senate, December 16, 1861.

Mr. Sumner offered the following resolution, and asked for its present consideration.

"*Resolved*, That the Committee on Patents and the Patent Office be directed to consider if any further legislation is necessary in order to secure to persons of African descent, in our own country, the right to take out patents for useful inventions, under the Constitution of the United States."

MR. PRESIDENT, — If I can have the attention of the Chairman of the Committee on Patents, I will state to him why this resolution is introduced. It has come to my knowledge that an inventor of African descent, living in Boston, applied for a patent under the Constitution and laws of the land, and was refused, on the ground, that, according to the Dred Scott decision, he is not a citizen of the United States, and therefore a patent cannot issue to him. I wish the Committee to consider whether in any way that abuse cannot be removed. That is all.

The resolution was considered by unanimous consent, and agreed to.

The Committee made no report on the resolution. It was a case for interpretation rather than legislation, and the question, like that of passports, was practically settled not long afterwards by the opinion of the Attorney-General, that a free man of color, born in the United States, is a citizen.[1] Since then patents have been issued to colored inventors.

[1] Opinions of Attorneys-General, Vol. X. p. 382, November 29, 1862.

THE NATIONAL ARMIES AND FUGITIVE SLAVES.

Resolution and Remarks in the Senate, December 18, 1861.

The abuses in Missouri, to which Mr. Sumner called attention, December 4, 1861, appeared even in the neighborhood of Washington, almost under the eye of Congress, so that he felt it his duty to expose them once more.

December 18, he spoke briefly on the following resolution, introduced by himself the preceding day.

"*Resolved*, That the Committee on Military Affairs and the Militia be directed to consider the expediency of providing by additional legislation that our national armies shall not be employed in the surrender of fugitive slaves."

MR. PRESIDENT, — Some days ago it was my duty to expose abuses in Missouri in regard to fugitive slaves. Since then I have received communications from that State, showing great interest in the question, some of them in the nature of protest against the system adopted there. One purports to be from a slave-master, educated in a Slave State, and he speaks with bitterness of the indignity put upon the army there, and of the injury it inflicts on the cause of the Union. Another contains a passage which I shall read.

"I wish to say in addition that I have lived twenty-four years in Missouri, that I know the people well, have served them in various offices; and let me assure you, it is nonsense to try to save Missouri to the Union, and the institu-

tion of Slavery also. We must give up one or the other. Slavery ought to fall, and Missouri be saved. Fremont's army struck terror into the Secessionists. He made them feel it by taking their goods and chattels. Let our armies proclaim freedom to the slaves of the Secessionists and the Rebellion will soon close. We can take care of the free negroes at a future day; give General Lane ten thousand men, and he would establish peace in Missouri in thirty days."

But, Sir, my special object now is, to exhibit wrong here at home rather than in distant Missouri. Brigadier-General Stone, the well-known commander at Ball's Bluff, is adding to his disaster there by engaging in the surrender of fugitive slaves. He does this most successfully. If a fugitive slave is to be handed over to a Rebel, the General is easily victorious.

Sir, beside my constant interest in this question, beside my interest in the honor of the national army, I have a special interest at the present moment, because Brigadier-General Stone sees fit to impose this vile and unconstitutional duty upon Massachusetts troops. The Governor of my honored State has charged me with a communication to the Secretary of War, treating it as an indignity to the men, and an act unworthy of the flag. I agree with the Governor; and when I ask your attention to this outrage, I make myself his representative, as well as my own.

Others beside the Governor of Massachusetts complain. There are two German companies in one of the Massachusetts regiments, who entered into the public service with the positive understanding that they should not be put to any such discreditable and unconstitutional service. They complain, and with them all their own

compatriot fellow-citizens, the enlightened, freedom-loving German population throughout the country.

The complaint extends to other quarters. Here is a letter from Philadelphia, interesting and to the point. I read a short extract only.

"I have but one son, and he fought on Ball's Bluff in the California regiment, where his bravery brought him into notice. He escaped, wounded, after dark. He protests against being made to return fugitive slaves, and, if ordered to that duty, will refuse obedience and take the consequences. I ask, Sir, shall our sons, who are offering their lives for the preservation of our institutions, be degraded to slave-catchers for any persons, loyal or disloyal? If such is the policy of the Government, I shall urge my son to shed no more blood for its preservation."

With such communications, some official and others private, I feel that I should not do my duty, if I failed to implore the attention of the Senate to this intolerable grievance. It must be arrested. I am glad to know that my friend and colleague, the Chairman of the Committee on Military Affairs [Mr. WILSON], promises us a bill to stop this outrage. It should be introduced promptly, and passed at once. Our troops must be saved from such shame.

The resolution was adopted after remarks by Mr. Cowan, of Pennsylvania, which revealed the tone still prevalent in certain quarters. He said: —

"I agree, that, if all men were Puritans, that, if all men appreciated Liberty as we do, and as our race does, then we might extend it to all men; but to extend it to men who have no appreciation of it, who would trample the boon under foot, when granted them, — to such men it is a mischief rather than a blessing.

"Still I have only to say, that I think we have nothing in the world to do with all these questions. I think their discussion here, their being mooted

in these assemblies, is mischievous, and only calculated to keep up an angry irritation, which may have exceedingly bad results in the final consummation of the struggle in which we are now engaged."

Mr. Wilson, as chairman of the Committee, reported a bill on the subject, which, after debate, gave way to another from the House of Representatives, containing a new article of war, prohibiting the employment of the national forces in the return of fugitive slaves, which became a law March 13, 1862.[1]

This movement of Mr. Sumner was followed by a personal incident. General Stone, whose conduct was exposed with severity, took exception to the speech, and addressed him a letter intended to be very insulting. Mr. Sumner made no reply, nor did he utter any complaint in any quarter. A few days later he received notice from Boston that a near relative of the General had threatened to inflict personal violence upon him. Some time afterwards General Stone was taken into custody by military order, and for a long time incarcerated. The hostile press and the General's friends charged this upon Mr. Sumner, often in most offensive terms, and it was repeated in the face of his constant denial. April 21, 1862, the question of this arrest was considered in the Senate, on motion of Mr. McDougall, of California, when Mr. Sumner spoke briefly.

Mr. President, — I have no opinion to express on the case of General Stone, for I know nothing about it. Clearly he ought to be confronted with his accusers at an early day, unless, indeed, there be some reason of transcending military character, which, in the present condition of the country, at a moment of war, might render such a trial improper. Of this I do not pretend to judge; nor am I aware of evidence on which the Senate can now act.

. . . . .

I hope I shall be pardoned, if I allude to myself. A most persistent attempt has been made in newspapers to connect me with this arrest, to the extent of

[1] United States Statutes at Large, Vol. XII. p. 354.

according to me and my imagined influence the credit or the discredit of it. This is a mistake. I have been from the beginning an absolute stranger to it. The arrest was made originally without suggestion or hint from me, direct or indirect, and it has been continued without any such suggestion or hint from me. I knew nothing about it at the beginning, and know nothing about it now. There is no intimate friend or family relative of the prisoner more entirely free from all connection with it than myself.

EXPULSION OF TRUSTEN POLK, OF MISSOURI.

Resolution and Remarks in the Senate, December 18, 1861.

December 18, 1861, Mr. Sumner offered the following resolution, which, on his motion, was referred to the Committee on the Judiciary.

"*Resolved*, That Trusten Polk, of Missouri, now a traitor to the United States, be expelled, and he hereby is expelled, from the Senate."

Mr. Sumner produced a letter from Mr. Polk, which had found its way into the newspapers, where he says: "Dissolution is now a fact, — not only a fact accomplished, but thrice repeated. Everything here looks like inevitable and final dissolution. Will Missouri hesitate a moment to go with her Southern sisters? I hope not."

Mr. Saulsbury, of Delaware, thought the letter was "not genuine," and added: —

"He is a native of my own State; from early boyhood he has been an exemplary Christian, a member of a religious denomination; and when the phrase is used in that letter, professing to have been written by Trusten Polk, that he had to 'ante up $200,' I am satisfied the language is not the language of Trusten Polk. He is not familiar with scenes where hundreds of dollars are 'anted up.'"

Mr. Sumner replied: —

I DO not pretend to an opinion on the genuineness of the letter. Like the Senator from Delaware, I have seen it in several newspapers, and my attention has been specially called to it by correspondents in Missouri, who write that its genuineness cannot be doubted. But this is a question for the Committee.

If I understand the Senator, his argument against the genuineness of the letter is founded on a phrase which

he thinks Trusten Polk could never have written: it is a phrase of doubtful style or taste, showing bad associations. I am not familiar enough with Trusten Polk to sit in judgment on his style, nor is the Senate called to any such responsibility; but we are to sit in judgment on his public conduct, and if the letter is not a forgery, there can be no question as to our duty.

Believing the inquiry important, not doubting the duty of the Senate to purge itself of traitors who have too long found sanctuary in its Chamber, and satisfied that the country justly expects this to be done, I have felt bound to introduce the resolution.

But there is more than the letter. The Senate has heard within a few days that this person has found his way to Memphis. Why is he at Memphis, when he should be at Washington?

Some time afterwards Mr. Sumner received from Missouri the very letter, in the undoubted autograph of Mr. Polk, and with the phrase which it was insisted he could not have written.

January 9, 1862, Mr. Ten Eyck, of New Jersey, reported the resolution from the Committee, with the unanimous recommendation that it pass.

January 10, the resolution was adopted without debate: Yeas, 36; Nays, 0.

EMANCIPATION AND THE PRESIDENT.

LETTER TO GOVERNOR ANDREW, OF MASSACHUSETTS, DECEMBER 27, 1861.

THE following extract, copied from the letter-book of Governor Andrew, is a contemporary record of Mr. Sumner's efforts with the Governor, and also of an important remark by President Lincoln.

WASHINGTON, December 27, 1861.

. . . . . .

WE hope that in your Message you will keep Massachusetts ahead, where she always has been, in the ideas of our movement. Let the doctrine of Emancipation be proclaimed as an essential and happy agency in subduing a wicked rebellion. In this way you will help a majority of the Cabinet, whose opinions on this subject are fixed, and precede the President himself by a few weeks. He tells me that I am ahead of him only a month or six weeks. God bless you!....

Ever yours,

CHARLES SUMNER.

THE TRENT CASE, AND MARITIME RIGHTS.

SPEECH IN THE SENATE, ON THE SURRENDER OF MASON AND SLIDELL, REBEL AGENTS, TAKEN FROM THE BRITISH MAIL STEAMER TRENT, JANUARY 9, 1862. WITH APPENDIX.

Hamlet. Come on, Sir.
Laertes. Come, my Lord. [*They play.*]

. . . . .

Osric. A hit, a very palpable hit.
Laertes. Well, — again.
[LAERTES *wounds* HAMLET; *then, in scuffling, they change rapiers, and* HAMLET *wounds* LAERTES.]

SHAKESPEARE, *Hamlet*, Act V. Scene 2.

It is, perhaps, well that you settled the matter by sending away the men at once. *Consistently with your own principles you could not have justified their detention.* — RICHARD COBDEN, *MS. Letter to Mr. Sumner*, January 23, 1862.

This announcement is not made, my Lord, to revive useless recollections of the past, nor to stir the embers from fires which have been in a great degree smothered by many years of peace. Far otherwise. Its purpose is to extinguish those fires effectually, before new incidents arise to fan them into flame. The communication is in the spirit of peace and for the sake of peace, and springs from a deep and conscientious conviction that high interests of both nations require this so long contested and controverted subject now to be finally put to rest. — DANIEL WEBSTER, *Letter to Lord Ashburton*, August 8, 1842 : Works, Vol. VI. p. 325.

The case of the Trent was an important incident of the war, — most interesting for a time to the people of the United States, attracting the attention of foreign nations, and exciting England to hostile demonstrations, even to the verge of practical coöperation with a Rebellion for the sake of Slavery. The facts are few, and are authenticated by official documents.

At an early stage of the Rebellion, the Slave-Masters of Richmond appointed James M. Mason, of Virginia, commissioner and envoy to England, and John Slidell, of Louisiana, in the same capacity to France, each with a secretary, and also with instructions and despatches. Their duty was to help the Rebellion, especially in its financial and military exigencies, to urge its recognition, to make treaties of commerce and alliance, to obtain European intervention, and generally to oppose the diplomacy of the United States. As the Rebel ports were already under strict blockade, and there were no Rebel vessels for their conveyance, they were driven to rely upon accommodation under a neutral flag. Some time in October, 1861, they succeeded in running the blockade and reaching Havana. Here their pretensions and objects were notorious. But this was only the first stage in the voyage. The next was conveyance to Europe; and for this they relied upon the English flag, taking passage in the Trent, bound from Havana to St. Thomas, from which latter place a regular line of steamers, connecting with the Trent, ran to England. Mr. Dana, in his excellent statement of the case, says: "Their character and destination were well known to the agent and master of the Trent, as well as the great interest felt by the Rebels that they should, and by the United States officials that they should not, reach their destination in safety."[1] The regular mails for England from South America and Cuba were aboard, to be transferred at St. Thomas, with a large number of passengers bound to England.

On the high seas, within a few hours' sail of Nassau, the Trent was stopped and searched by the national steamer San Jacinto, commanded by Captain Wilkes, afterwards Rear-Admiral, acting on his own responsibility, and without any instructions from the National Government. The two commissioners and their secretaries were found aboard, but the despatches were secreted or confided to some of the passengers. Here Mr.

[1] Wheaton's Elements of International Law, edited, with Notes, by Richard H. Dana, Jr., Note 228, p. 645.

Dana remarks: "There was no evidence or charge that the commander of the Trent aided in the concealment or forwarding of these despatches. He did, however, deny the right of search, refused all facilities for it, and obstructed it by everything but actual force, and made it known to Captain Wilkes that he yielded only to superior power, and that, if made a prize, he and his crew would lend no aid in carrying the Trent into port."[1] Under these circumstances, Captain Wilkes took the two commissioners with their suite, and carried them as prisoners to the United States, while the Trent proceeded on her voyage.

As this incident became known in the United States, there was a general expression of sympathy and approbation. The press was unanimous. Persons in authority gave their adhesion by public speech or writing, among whom were Mr. Everett, Governor Andrew, Chief-Justice Bigelow of Massachusetts, Professor Parsons of the Law School at Cambridge, Mr. Caleb Cushing, and Mr. George Sumner, all of whom were to a certain extent under the influence of British precedents.

The Secretary of the Navy, under date of November 30, 1861, addressed a communication to Captain Wilkes, containing the following significant words.

"Your conduct in seizing these public enemies was marked by intelligence, ability, decision, and firmness, and has the emphatic approval of this Department. It is not necessary that I should in this communication, which is intended to be one of congratulation to yourself, officers, and crew, express an opinion on the course pursued in omitting to capture the vessel which had these public enemies on board, further than to say that the forbearance exercised in this instance must not be permitted to constitute a precedent hereafter for infractions of neutral obligations."[2]

The House of Representatives made haste, December 2, 1861, the first day of its session, to adopt a joint resolution tendering the thanks of Congress to Captain Wilkes, "for his brave, adroit, and patriotic conduct in the arrest and detention of the traitors James M. Mason and John Slidell." This was on the motion of Hon. Owen Lovejoy, the faithful Abolitionist. The joint resolution, on reaching the Senate, was referred to the Committee on Naval Affairs, of which Mr. Hale was chairman. Mr. Sumner suggested its reference to the Committee on Foreign Relations; but Mr. Hale insisted, by way of objection, that "the attempt now to take it out of its ordinary course and refer it to the Committee on Foreign Relations would be taken as an intimation that there is some doubt in some

[1] Wheaton's Elements of International Law, ed. Dana, Note 228, p. 645.
[2] Rebellion Record, Vol. III., Documents, p. 330.

minds as to the propriety of the course that Captain Wilkes took." Unwilling to raise a debate at that moment, Mr. Sumner assented to the reference proposed.

In England there was a counter sentiment, breaking out into expressions of exasperation. The press was bitter and vindictive. Public report attested a crisis, which may be read in the newspapers of Richmond, throbbing sympathetically with the London organs.

The *Richmond Examiner*, of December 19, broke forth in notes of triumph.

"All other topics become trifles beside the tidings of England which occupy this journal, and all commentary that diverts public attention from that single point is impertinence. The effect of the outrage of the Trent on the public sentiment of Great Britain more than fulfils the prophecy that we made when the arrest of the Confederate ministers was a fresh event. All legal quibbling and selfish calculation has been consumed like straw in the burning sense of incredible insult."

Then, speculating upon the position of the National Government, the same journal says : —

"The Abolition element of the Northern States would go straight to revolution at the least movement toward a surrender of the captives. . . . . Spectators of these events, who can doubt that the Almighty fiat has gone forth against the American Union, or that the Southern Confederacy is decreed by Divine Wisdom?"

The *Richmond Enquirer* of the same date likewise rejoiced.

"We have no need to invite attention to the extremely interesting foreign news which we publish to-day from England. The old British lion is giving an honest roar, in view of the indignity visited upon the Queen's flag. . . . . We will not disturb the eloquence of such facts by words of comment. We will only say, Well done, John Bull! France, too, echoes the British indignation, and will support her action. *Vive Napoléon!* . . . . After the brave talk and the congratulations to Wilkes by both Cabinet and Congress, it would be to the last degree pusillanimous to retreat. We think Lincoln will be afraid to prove so great a coward."

Swiftly came the British demand, in a letter from Earl Russell to Lord Lyons at Washington, dated at London, November 30, and read to Mr. Seward December 19. It concluded in the following terms.

"Her Majesty's Government, therefore, trust, that, when this matter shall have been brought under the consideration of the Government of the United States, that Government will, of its own accord, offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four gentlemen and their delivery to your Lordship, in order

that they may again be placed under British protection, and a suitable apology for the aggression which has been committed. Should these terms not be offered by Mr. Seward, you will propose them to him." [1]

"The four gentlemen," being the commissioners and their secretaries, all Rebels, were to be liberated forthwith, and "a suitable apology" was to be made by the National Government. Such was the mandate. But accompanying these instructions read to Mr. Seward was a private communication to Lord Lyons, directing him to break up his legation and to leave Washington, if the National Government did not submit to the terms required after "a delay not exceeding seven days." Here are the words: —

"Should Mr. Seward ask for delay, in order that this grave and painful matter should be deliberately considered, you will consent to a delay not exceeding seven days. If at the end of that time no answer is given, or if any other answer is given except that of a compliance with the demands of Her Majesty's Government, your Lordship is instructed to leave Washington, with all the members of your legation, bringing with you the archives of the legation, and to repair immediately to London. . . . . You will communicate with Vice-Admiral Sir A. Milne immediately upon receiving the answer of the American Government, and you will send him a copy of that answer, together with such observations as you may think fit to make. You will also give all the information in your power to the Governors of Canada, Nova Scotia, New Brunswick, Jamaica, Bermuda, and such other of Her Majesty's possessions as may be within your reach." [2]

These latter instructions, contemplating war, were unknown in our country at the time of the settlement, and, when read in the calmness of a period removed from the event, seem incomprehensible in spirit. They are positive and peremptory, without recognizing any possibility of delay, even for a proposal of arbitration. Plainly they announce, as the British alternatives, instant surrender, with suitable apology, or war. This is the conclusion of Mr. Dana, in his admirable note, and nobody can doubt it.

In accord with this note was the conduct of the British Government, making preparations for war; and here is unimpeachable British testimony.

"Troops were despatched to Canada with all possible expedition; and that brave and loyal colony called out its militia and volunteers, so as to be ready to act at a moment's notice. Our dock-yards here resounded with the din of workmen getting vessels fitted for sea; and there was but one feeling, which animated all classes and parties in the country, and that was a deter-

[1] Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, p. 4.
[2] Annual Register, 1861, p. 291.

mination to vindicate our insulted honor and uphold the inviolability of the national flag." [1]

At that moment the American Republic was straining every nerve to suppress a Rebellion whose single declared object was the foundation of a new government with Slavery as its corner-stone. War by England was practical recognition of the new government, with alliance and breaking of the blockade.

The difficulty in comprehending this attitude is increased, when it is known that the British Government did not regard the seizure as authorized by instructions. In his letter to Lord Lyons, Earl Russell says expressly: "Her Majesty's Government are willing to believe that the United States naval officer who committed the aggression was not acting in compliance with any authority from his Government." [2] Therefore the National Government had done nothing, — absolutely nothing.

On the same day that Earl Russell indited his remarkable despatch, Mr. Seward wrote from Washington to Mr. Adams, at London, on business of the legation, and in his letter mentions that Captain Wilkes "acted without any instructions from the Government." He adds: "We have done nothing on the subject to anticipate the discussion." The letter throughout is in the spirit of peace. After declaring his inference "that the British Government is now awake to the importance of averting possible conflict, and disposed to confer and act with earnestness to that end," Mr. Seward says, "If so, we are disposed to meet them in the same spirit, as a nation chiefly of British lineage, sentiments, and sympathies, a civilized and humane nation, a Christian people," and then adds, that the affair of the Trent "is to be met and disposed of by the two Governments, if possible, in the spirit to which I have adverted," [3] that is, with a sense of "the importance of averting possible conflict," and a disposition "to confer and act with earnestness to that end," as a Christian people. It so happened that Mr. Adams read this letter to Earl Russell on the very day that Lord Lyons read the demand for surrender and apology to Mr. Seward; but the British Government did not allow its pacific contents to become known, and the war-fever went on. Here Mr. Dana aptly remarks: "The truth seems to be, that, so long as they were uncertain whether their menace of war might not lead to war, they could not afford to withdraw the chief motive for the war-spirit in the British people, and to admit that their warlike demonstration had been needless. Their popular

[1] Annual Register, 1861, p. 254].
[2] Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, p. 3.
[3] Ibid, p. 2.

support depended upon a general belief in a necessity for their having accompanied their demand with the preparations and menace of war."[1]

The extraordinary character of this demand was recognized at the time in Europe. The Count de Gasparin, after describing it as "a question of declaring war," and an "ultimatum," said: "Between great nations, between sister nations, it was a strange opening. The usage is hardly to commence with an *ultimatum*,—that is, to commence with the end. Ordinarily, when there has been a misunderstanding or regrettable act, especially when that act comes within a portion of the Law of Nations which is yet full of obscurity, the natural opening is to ask for explanations as to the intentions, and for reparation for what has been done, without mixing therewith an immediate menace of rupture."[2] After expressing astonishment that a demand of apology "figured in the original programme," which he pronounced entirely out of place, the impartial Frenchman proceeds: "Seeing such haste and proclamation so lofty of an exigence above debate, seeing the idea of an impious war accepted with so much ease by some and with such joy so little dissembled by others, Europe declared, without ambiguity or reserve, that, if England were not miraculously saved from her own undertaking, that, if she went so far as to fire a cannon at the North as an ally of the South, she would tear with her own hands her principal titles to the respect of the civilized world."[3] Rejecting the pretension that the maintenance of peace was due to the "warlike measures of England," the eloquent moralist exclaims, "America has just rendered to England the most signal service which ever a people rendered to another people," and this by refusing the war which was menaced, — a war, as painted by him, where, in addition to untold calamity, would be the wretchedness of striking at the liberty of the world in alliance with slave-traders. How naturally he adds: "From the moment that she is only the ally of slave-traders, she has abdicated."[4]

The summary tone of the British Government and the contemporaneous preparations for war enhanced the difficulties peculiar to such a question; but it was easy to see, on examination, that the demand was in substantial conformity with American precedents, and accordingly the Rebels, who had been confined at Fort Warren, in Boston Harbor, were handed over to the British Government.

While the question was under consideration by the Cabinet of President Lincoln, and before any conclusion had been communicated to the

[1] Wheaton's Elements of International Law, ed. Dana, Note 228, p. 655.
[2] L'Amérique devant l'Europe, p. 176.
[3] Ibid., p. 177.
[4] Ibid., pp. 209, 210.

British Government, an incident occurred in the Senate which showed the feeling that sought expression. December 26th, Mr. Hale, of New Hampshire, who had already avowed his sympathy with the act of Captain Wilkes, found occasion to discuss it at some length, and to denounce the idea of surrendering the Rebels. A few passages will show the tone he adopted.

"I believe that the Cabinet to-day and yesterday, and for some days past, have had under consideration a measure which involves more of good or evil to this country than anything that has ever occurred before: I mean the surrender, on the demand of Great Britain, of the persons of Messrs. Slidell and Mason. To my mind, a more fatal act could not mark the history of this country, — an act that would surrender at once to the arbitrary demand of Great Britain all that was won in the Revolution, reduce us to the position of a second-rate power, and make us the vassal of Great Britain. . . . .

"I have seen many gentlemen, and I have seen none, not a man can be found, who is in favor of this surrender; for it would humiliate us in the eyes of the world, irritate our own people, and subject us to their indignant scorn. If we are to have war with Great Britain, it will not be because we refuse to surrender Messrs. Mason and Slidell: that is a mere pretence. If war shall come, it will be because Great Britain has determined to force war upon us. They would humiliate us first and fight us afterwards. If we are to be humiliated, I prefer to take it after a war, and not before. . . . . I pray that this Administration will not surrender our national honor. I tell them that hundreds and thousands and hundreds of thousands will rush to the battle-field, and bare their breasts to its perils, rather than submit to degradation."[1]

Mr. Sumner at that time had not seen the demand, and was without any precise information on the subject, but felt it his duty to say something by way of breakwater against the rising tide. He spoke briefly.

Mr. President, — The Senator has made his speech, and then withdrawn his motion; he has accomplished his object. For myself, Sir, I would rather meet this question, truly important, when presented in a practical form. The Senator treats it on an hypothesis; he assumes that Great Britain has made an arrogant demand, and then proceeds to denounce it. How does he know that any such demand has been made? Who in

[1] Congressional Globe, 37th Cong. 2d Sess., pp. 176. 177.

the Senate knows it? Who in the country knows it? I do not believe it, — will not believe it, except on evidence.

The Senator says that he is not against arbitration. How does he know that this is not the policy of the Administration? But I know nobody here who can speak for the Administration on this point.

I submit to the Senator that on both points he has spoken too swiftly. There is no evidence to justify him in belief that any arrogant demand has been made; there is no evidence that can lead him to distrust the fidelity of the Administration. Speaking for myself and nobody else, I declare my conviction that the question will be peaceably and honorably adjusted. I do not believe that it is a question for war; and I hail with gratitude the declaration of the honorable Senator in favor of arbitration. This at least is pacific in what must be called a war speech. But do not understand me as intimating that such mode is under consideration. I content myself with repeating, that the question is in safe hands, and that it will be better for us to reserve ourselves until it is presented in some practical form, or at least on evidence, and not on mere hypothesis.

Mr. Sumner had been with the President and his Cabinet the day before, to read important letters just received from Mr. Cobden and Mr. Bright; but he did not know the conclusion on the question. The few words in reply to Mr. Hale were in the spirit of peace, and as such were warmly welcomed by the public. The sympathy they awakened attests the prevailing interest. A leading citizen of Providence wrote: "Very many thanks for your mild rebuke of our friend Senator Hale, when he mounted the war-horse." Another in Boston adopted the same vein: "For your wise words, after the war speech of Mr. Hale, you have my thanks, and the thanks of thousands who will never express to you their feelings. I know you will exert your great

influence on the side of peace, and I rejoice that you have so much moral power in this matter." Rev. George C. Beckwith, Corresponding Secretary of the American Peace Society, had promptly declared his trust: "It is a matter of special congratulation, that the helm of our Foreign Relations, so far as the Senate is concerned, is held at this juncture in hands so worthy of our confidence. We trust that you and your Committee will have all the wisdom and other qualities needed to meet the case now before us just as it ought to be." A friend holding high office in Massachusetts augured new strength for Mr. Sumner in the battle with Slavery: "Your decisive speech," he wrote, "will do much to raise you in the estimation of those who were alarmed by your Emancipation doctrines, and who begin to see that you are right in that, as well as other things."

The confidence reposed had its responsibilities increased by his position as Chairman of the Committee on Foreign Relations, and, when the surrender was announced, Mr. Sumner felt it a duty to do what he could in reconciling the people to his conclusion, especially as he was satisfied that the original taking of the Rebels could not be justified without adopting most obnoxious British precedents. Besides, reform in Maritime Law seemed to be involved in the discussion, and he was not without hope of contributing to this important result. Therefore he made an early occasion to address the Senate on the subject.

In his speech Mr. Sumner brought into strong relief the early and long continued pretension of England to enter our ships and take our sailors without trial of any kind, as Captain Wilkes had entered the Trent and taken the Rebel agents. In presenting this point, he was determined not only by the London press, which adopted the original American objection to any such entry and taking, but also by the unpublished opinions of the law advisers of the Crown, which he had before him in manuscript.

The capture of the Rebels was known in London on the evening of 27th November. But some time before, on an intimation that such an attempt might be made, the British Government had asked the opinion of the law officers on the questions involved in such an act. An answer was returned, bearing date 12th November, which was signed by the Queen's Advocate-General, the Attorney-General, and the Solicitor-General. In this opinion it was stated: "The United States ship of war may put a prize crew on board the West India steamer and carry her off to a port of the United States for adjudication by a Prize Court there; *but she would have no right to remove Messrs. Mason and Slidell and carry them off as prisoners, leaving the ship to pursue her voyage.*" This opinion was supposed to have greater value because it

was given sixteen days before anything on the subject had appeared in the London press. Afterwards the case of the Trent was submitted to these law officers, and on the 28th of November they gave another opinion in accordance with the former, where they say: "From on board a merchant ship of a neutral power, pursuing a lawful and innocent voyage, *certain individuals have been taken by force. They were not apparently officers in the military or naval service of the Confederate Government.*" They conclude that Her Majesty's Government "will be justified in requiring reparation for the international wrong which has been on this occasion committed." In conformity with this opinion, Earl Russell, in his letter demanding the surrender, treated it simply as a forcible taking of "certain individuals" from an innocent British vessel at sea by an American ship of war, all of which had been too often done by British ships of war with innocent American vessels at sea.

It will be observed that Earl Russell uses the most general language, without specification; but the contemporaneous press dwelt on the single point taken by the law officers. One of these is quoted in Mr. Sumner's speech.

In France, the *Revue des Deux Mondes* wrote, as if instructed from Downing Street: —

"England *confines herself* to denying that an officer can erect himself into a judge in such a cause, the decision of which should belong only to a Court of Admiralty. Captain Wilkes, *substituting himself arbitrarily for the judicial authority*, alone competent to give a legal character to his prize, England can see in the act which he committed on the Trent only an act of violence, an outrage perpetrated against the British flag." [1]

This single point found sudden favor in England. Nassau W. Senior, the eminent economist, in close relations with the British Cabinet, wrote to Mr. Sumner, under date of December 10: "We think that Captain Wilkes *could not make himself judge in his own cause;* that the utmost he could have done legally would have been to take the Trent into an Admiralty Court." Here the able Englishman simply echoes the early and constant doctrine of our country; but others among his countrymen did the same.

The intimate relations of Mr. Sumner with Mr. Cobden and Mr. Bright, already existing, were quickened during this anxious period, when these eminent English statesmen wrote constantly, full of friendship for our country and anxious always for peace. The perfect freedom of these communications may be judged by a passage in a letter of Mr. Cobden.

[1] Revue des Deux Mondes, Jan.-Fév., 1862, p. 245.

"I write to you, of course, in confidence; and I write to you what I would not write to any other American,—nay, what it would be perhaps improper for any other Englishman than myself to utter to any other American but yourself. But we are, I think, both more of Christians and cosmopolitans than British or Yankee."

Intervening time and death have removed the seal of confidence, opening what passed between them to the observation of history.

Mr. Cobden occupied himself especially to obtain important reforms in International Law on the ocean. This was part of his scheme for disarmament; and here Mr. Sumner was a fellow-laborer. He was anxious that the attention suddenly directed to Maritime Rights should redound to the good of the Human Family. His programme was given in a letter dated December 5, and read by Mr. Sumner to President Lincoln and his Cabinet, while considering the British demand, on the forenoon of Christmas day. Mr. Cobden begins by quoting from the public letter of General Scott, then at Paris.

"I am sure that the President and people of the United States would be but too happy to let these men go free, unnatural and unpardonable as their offences have been, if by it they could emancipate the commerce of the world. Greatly as it would be to our disadvantage, at this present crisis, to surrender any of these maritime privileges of belligerents which are sanctioned by the Laws of Nations, I feel that I take no responsibility in saying that the United States will be faithful to their traditional policy upon this subject, and to the spirit of their political institutions."

He then proceeds: —

"If I were in the position of your Government, I would act upon it, and thus, by a great strategic movement, turn the flank of the European powers, *especially of the governing classes of England.* I would propose to let Mason and Slidell go, and stipulate, at the same time, for a complete abandonment of the old code of Maritime Law as upheld by England and the European powers. I would propose that private property at sea should be exempt from capture by armed Government ships. On this condition I would give in my adhesion to the abolition of privateering. I would propose that neutral merchant vessels, in time of war, as in time of peace, should be exempt from search, visitation, or detention, by armed Government vessels, when on the ocean or high seas, — I mean when beyond that distance from the shore which removes them from the jurisdiction of any maritime state. I would propose to abolish blockades of purely commercial ports, excepting for articles contraband of war."

To these just and magnificent reforms Mr. Cobden returns in other letters, dwelling on the abolition of blockades, but pressing upon our country the duty of advancing all, and, in the ardor of appeal, exclaim-

ing, "Take high ground with Europe for a complete sweep of the old maritime code, and then take your own time to deal with the Slave States," and concluding another letter with the words, "Recollect how immensely you would gain in moral power by leading all Europe in the path of civilization. You owe it to yourselves and us."

This correspondence reveals the anxiety of good Englishmen, and also the various reports by which the public mind was perplexed. In one letter Mr. Cobden writes: "Everybody tells me that war is inevitable; and yet I do not believe in war." In another he mentions "an impression in high quarters that Mr. Seward wishes to quarrel with this country," which he characterizes as "absurd enough." In another he alludes to the joint resolution of thanks to Captain Wilkes, adopted by the House of Representatives, as "viewed here by our alarmist journals as almost a declaration of war"; and, after mentioning that "grave men, holding the highest post in your cultivated State of Massachusetts, compliment Captain Wilkes for having given an affront to the British lion," he says, with point, "It makes it very hard for Bright and me to contend against the British-lion party in this country."

Even in this peculiar atmosphere his clearness of perception did not fail, and Mr. Cobden saw the mistake of principle or policy involved in the "impressment" of the Rebel agents. In the postscript of a letter dated November 27, the very day when the taking was first known in London, he wrote: "We are rather unprepared to find you exercising in a strained manner the right of search, *inasmuch as you have been supposed to be always the opponents of the practice.*"

In the same vein his eloquent colleague, Mr. Bright, wrote, under date of December 5: "Our law officers are agreed and strong in their opinion of the illegality of the seizure of the commissioners; *but I cannot make out how or where it exceeds the course taken by English ships of war before the War of* 1812. But all the people here, of course, accept their opinion as conclusive on the law of the case."

Thus directly from the opinions of the law officers, and also from various testimony, including the press, is it apparent that the special objection of England was founded on the forcible taking of "certain individuals" from a British vessel.

Naturally, therefore, Mr. Sumner planted himself on the early American postulate, constantly maintained by us and constantly denied by England. In the able note already cited Mr. Dana sums up the result.

"This celebrated case can be considered as having settled but one principle, and that had substantially ceased to be a disputed question: viz., that a public ship, though of a nation at war, cannot take persons out of a neu-

tral vessel at sea, whatever may be the claim of her Government on those persons." [1]

Mr. Seward was, therefore, right, when, in his communication to Lord Lyons, he announced the settlement of the case "upon principles confessedly American." [2] In similar spirit, Prince Gortschakoff, in behalf of the Russian Cabinet, congratulated our Republic upon "remaining faithful to the political principles which she has always maintained, even when those principles were turned against her, and abstaining from invoking in her turn the benefit of doctrines which she has always repudiated." [3] And Baron Ricasoli, speaking for the Italian Cabinet, would not believe that the Government at Washington "desired to change its character all at once, and become the champion of theories which history has shown to be calamitous, and which public opinion has condemned forever." [4]

The correspondence "in relation to the recent removal of certain citizens of the United States from the British mail-steamer Trent," including the letter of Earl Russell and the reply of Mr. Seward, and also the letter of M. Thouvenel, Minister of Foreign Affairs in France, was communicated to the Senate January 6, 1862. Its reference to the Committee on Foreign Relations was, on motion of Mr. Sumner, made the special order for January 9th, at one o'clock, when he made his speech.

January 7th, two days before Mr. Sumner's speech, the subject was discussed in the House of Representatives, and strong speeches were made against the surrender. Mr. Vallandigham, of Ohio, a leading Democrat, said: —

"I avail myself of this, the earliest opportunity yet presented, to express my utter and strong condemnation, as one of the Representatives of the people, of the act of the Administration surrendering Mr. Mason and Mr. Slidell to the British Government. . . . . In six days after the imperious and peremptory demand of Great Britain they were abjectly surrendered, upon the mere rumor of the approach of a hostile fleet; and thus, Sir, for the first time in our national history, have we strutted insolently into a quarrel without right and then basely crept out of it without honor; and thus, too, for the first time, has the American eagle been made to cower before the British lion." [5]

Then again the same Democratic Proslavery orator said: —

[1] Wheaton's Elements of International Law, ed. Dana, Note 228, p. 648.
[2] Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, p 13.
[3] Ibid., No. 22, p. 2.
[4] Ibid., No. 30, p. 2.
[5] Congressional Globe, 37th Cong. 2d Sess., p. 208.

"I would prefer a war with England to the humiliation which we have tamely submitted to; and I venture the assertion that such a war would have called into the field five hundred thousand men who are not now there, and never will be without it, and have developed an energy and power in the United States which no country has exhibited in modern times, except France, in her great struggle in 1793."[1]

In equal opposition to the British demand, Mr. B. F. Thomas, of Massachusetts, an able lawyer, said: —

"The surrender is made, the thing done. In the presence of great duties we have no time for the luxury of grief. Complaint of the Government would be useless, if not groundless. It was too much to ask of it to take another war on its hands. . . . . But we are not called upon, Mr. Speaker, to say that the demand was manly or just. It was unmanly and unjust. It was a demand which, in view of her history, of the rights she had always claimed and used as a belligerent power, of the principles which her greatest of jurists, Lord Stowell, had imbedded in the Law of Nations, England was fairly estopped to make. . . . . When the matter is more carefully weighed, it will be seen and felt that no wrong was done to England, — that there was no wrong in the forbearance to exercise an extreme right, — no insult, for none was intended, — that our feeling, if any, leaned to virtue's side, was a relaxation of the iron rigor of law from motives of humanity and Christian courtesy, — that, on the other hand, England has done to us a great wrong, in availing herself of our moment of weakness to make a demand, which, accompanied as it was by the 'pomp and circumstance of war,' was insolent in spirit and thoroughly unjust. . . . . But the loss will ultimately be hers. She is treasuring up to herself wrath against the day of wrath. She has excited in the hearts of this people a deep and bitter sense of wrong, of injury inflicted at a moment when we could not respond. It is night with us now; but through the watches of the night, even, we shall be girding ourselves to strike the blow of righteous retribution."[2]

In similar spirit, Mr. Wright, of Pennsylvania, said: —

"Let England take them; if she has a mind to fête and toast them, let her do it, — it is none of our business; if England desires to make lions of Confederate Rebels, it is a mere matter of taste. If they have to be surrendered, then let them be surrendered under a protest, while we shall remember hereafter that there is a matter to be cancelled between the British Government and the United States of North America."[3]

These utterances show elements in the atmosphere when Mr. Sumner spoke. With many there was grief mingled with indignation, while others who accepted the result felt a new burden added to the war. Something was needed as a rally.

[1] Congressional Globe, 37th Cong. 2d. Sess., p. 211.
[2] Ibid., pp. 209, 210.
[3] Ibid., p. 211.

SPEECH.

MR. PRESIDENT, — Every principle of International Law, when justly and authoritatively settled, is a safeguard of peace and a landmark of civilization. It constitutes part of that code which is the supreme law, above all municipal laws, binding the whole Commonwealth of Nations. Such a settlement may be by a general Congress of Nations, as at Munster, Vienna, or Paris; or it may be through the general accord of treaties; or it may be by a precedent established under such conspicuous circumstances, with all nations as assenting witnesses, that it becomes at once a commanding rule of international conduct. Especially is this the case, if disturbing pretensions, long maintained to the detriment of civilization, are practically renounced. Without congress or treaty, such a precedent is now established.

Surely it ought to be considered and understood in its true character. Undertaking to explain it, I shall speak for myself alone; but I shall speak frankly, according to the wise freedom of public debate, and the plain teachings of history on the question involved, trusting sincerely that what I utter may contribute something to elevate the honest patriotism of the country, and perhaps to secure that tranquil judgment un-

der which this precedent will be the herald, if not the guardian, of international harmony.

Two old men and two younger associates, recently taken from the British mail packet Trent, on the high seas, by order of Captain Wilkes of the United States Navy, and afterwards detained in custody at Fort Warren, are liberated and placed at the disposition of the British Government. This is at the instance of that Government, made on the assumption that the original capture was an act of violence constituting an affront to the British flag, and a violation of International Law. This is a simple outline of the facts. To appreciate the value of the precedent, other matters must be brought into view.

These two old men were citizens of the United States, and for many years Senators. Arrogant, audacious, persistent, perfidious, — one was author of the Fugitive Slave Bill, and the other was chief author of the filibustering system which has disgraced our national name and disturbed our national peace. Occupying places of trust and power in the service of the country, they conspired against it, and at last the secret traitors and conspirators became open rebels. The present Rebellion, surpassing in proportions and in wickedness any rebellion in history, was from the beginning quickened and promoted by their untiring energies. That country to which they owed love, honor, and obedience, they betrayed and gave over to violence and outrage. Treason, conspiracy, and rebellion, each in succession, acted through them. The incalculable expenditures now tasking the national resources, — the untold derangement of affairs, not only at home, but abroad, — the levy of

armies without example, — the devastation of extended spaces of territory, — the plunder of peaceful ships on the ocean, and the slaughter of fellow-citizens on the murderous battle-field, — such are some of the consequences proceeding directly from them.

To carry forward still further the gigantic crime of which they were so large a part, these two old men, with their two younger associates, stole from Charleston on board a Rebel steamer, and, under cover of darkness and storm, running the surrounding blockade and avoiding the national cruisers, succeeded in reaching the neutral island of Cuba, where, with open display and the knowledge of the British consul, they embarked on board the British mail packet Trent, bound for St. Thomas, whence they were to embark for England, in which kingdom one of them was to play the part of Ambassador of the Rebellion, while the other was to play the same part in France. The original treason, conspiracy, and rebellion, of which they were so heinously guilty, were all continued on this voyage, which became a prolongation of the original crime, destined to still further excess through their ambassadorial pretensions, which it was hoped would array two great nations against the United States, and enlist them openly in support of an accursed Slaveholding Rebellion. While on their way, the pretended ambassadors were arrested by Captain Wilkes, of the United States steamer San Jacinto, an accomplished officer, already well known by scientific explorations, who on this occasion acted without instructions from his Government. If in this arrest he forgot for a moment the fixed policy of the Republic, which has been from the beginning like a frontlet between the eyes, and tran-

scended the Law of Nations, as the United States have always declared it, his apology will be found in the patriotic impulse by which he was inspired, and the British examples he could not forget. They were the enemies of his country, embodying in themselves the triple essence of worst enmity, — treason, conspiracy, and rebellion; and they bore a professed ambassadorial character, which, as he supposed, according to high British authority, rendered them liable to be stopped, while, as American citizens, they were liable to seizure by the National Government in strict conformity with long continued British practice. If, in the ardor of an honest nature, Captain Wilkes erred, he might well say, —

> "Who can be wise, amazed, temperate and furious,
> Loyal and neutral, in a moment? No man.
> The expedition of my violent love
> Outran the pauser reason. . . . .
> . . . . . Who could refrain,
> That had a heart to love, and in that heart
> Courage to make his love known?"

If this transaction be regarded exclusively in the light of British precedents, if we follow the seeming authority of the British Admiralty, speaking by its greatest voice, and especially if we accept the oft repeated example of British cruisers, upheld by the British Government against the oft repeated protests of the United States, we find little difficulty in vindicating it. The act becomes questionable only when brought to the touchstone of those liberal principles which from the earliest times the American Government has openly avowed and sought to advance, and other European nations have accepted with regard to the sea. Great Britain cannot complain, except by

adopting those identical principles; and should we undertake to vindicate the act, it can be only by repudiating those identical principles. Our two cases will be reversed. In the struggle between Laertes and Hamlet, the combatants exchanged rapiers, so that Hamlet was armed with the rapier of Laertes, and Laertes with the rapier of Hamlet. And now, on this sensitive question, a similar exchange occurs. Great Britain is armed with American principles, while to us are left only those British pretensions which throughout our history have been constantly, deliberately, and solemnly rejected.

Earl Russell, in his despatch to Lord Lyons, communicated to Mr. Seward, contents himself by saying that "it appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral power, *while such vessel was pursuing a lawful and innocent voyage,* — an act of violence which was an affront to the British flag, and a violation of International Law."[1] Here is positive assertion that the ship, notoriously having on board the Rebel emissaries, was pursuing a lawful and innocent voyage; but there is no specification of the precise ground on which the act is regarded as a violation of International Law. Of course, it is not an affront; for an accident can never be an affront to an individual or to a nation.

But public report, authenticated by various authorities, English and Continental, forbids us to continue ignorant of the precise ground on which this act is presented as a violation of International Law. It is admitted that a United States man-of-war, meeting a

[1] Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, p. 3.

British mail steamer beyond the territorial limits of Great Britain, may subject her to visitation and search; also that such man-of-war might put a prize crew on board the British steamer, and take her to a port of the United States for adjudication by a Prize Court there; but it is alleged that she would have no right to remove the individuals, not apparently officers in the military or naval service, and carry them off as prisoners, leaving the ship to pursue her voyage.[1] Under the circumstances, in the exercise of a belligerent right, the British steamer, with all on board, might have been captured and carried off; but, according to the British law officers, on whose professional opinion the British Cabinet acted, the whole proceeding was vitiated by failure to take the packet into port for condemnation. This failure is the occasion of much unprofessional objurgation; and we are emphatically and constantly reminded that the custody of the individuals in question could not be determined by a navy officer on his quarter-deck, so as to supersede the adjudication of a Prize Court. This is confidently stated by an English writer, assuming to put the case for his Government, as follows.

"It is not to the right of search that we object, *but to the following seizure without process of law.* What we deny is *the right of a naval officer to stand in place of a Prize Court,* and adjudicate, sword in hand, with a *sic volo, sic jubeo,* on the very deck which is a part of our territory."[2]

The same authority flourishes the same objection again.

[1] MS. Opinion of the British Law Officers. *Ante*, p. 163.
[2] The Examiner [London], December 7, 1861, p. 769.

"If Captain Wilkes and his irresponsible supporters imagine that we shall submit to the *arbitrary, semi-barbarous practice*, they will in a few days be undeceived; for our Government has instructed Lord Lyons to demand reparation for so wanton a breach of friendly relations." [1]

Such declarations in an important journal, and in precise harmony with the opinions of the British law officers, seem semi-official in character.

Thus it appears that the present complaint of the British Government is not founded on any assumption by the American war steamer of the belligerent right of search, — nor on the ground that this right was exercised on a neutral vessel between two neutral ports, — nor that it was exercised on a mail steamer, sustained by subvention from the Crown, and officered in part from the royal navy, — nor that it was exercised in a case where the penalties of contraband could not attach; but it is founded simply and precisely on the idea that persons other than apparent officers in the military or naval service cannot be taken out of a neutral ship at the mere will of the officer exercising the right of search, and without any form of trial. Therefore the Law of Nations has been violated, and the conduct of Captain Wilkes must be disavowed, while men who are traitors, conspirators, and rebels, all in one, are allowed to go free.

Surely, that criminals, though dyed in guilt, should go free, is better than that the Law of Nations should be violated, especially in any rule by which war is restricted and the mood of peace is enlarged; for the Law of Nations cannot be violated without overturning the protection of the innocent as well as the guilty. On

[1] The Examiner, December 7, 1861, p. 770.

this general principle there can be no question. It is but an illustration of that important maxim, recorded in the Latin of Fortescue, "Better that twenty guilty should escape than one innocent man should suffer,"[1] with this difference, that in the present case four guilty ones escape, while the innocent everywhere on the sea obtain new security. And this security becomes more valuable as a triumph of civilization, when it is considered that it was long refused, even at the cannon's mouth.

Remember, Sir, that the question in this controversy is *strictly a question of law*, — precisely like a question of trespass between two neighbors. The British Cabinet began proceedings by taking the opinion of their law advisers, precisely as an individual begins proceedings in a suit at law by taking the opinion of his attorney. To make such a question *a case of war*, or to suggest that war is a proper mode of deciding it, is simply to revive, on a gigantic scale, the exploded Ordeal by Battle, and to imitate those dark ages when such proceeding was openly declared to be the best and most honorable mode of deciding even an abstract point of law. "It was a matter of doubt and dispute," says a mediæval historian, "whether the sons of a son ought to be reckoned among the children of the family, and succeed equally with their uncles, if their father happened to die while their grandfather was alive. An assembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and decision of judges. But the Emperor, following a better course, and desirous of dealing honorably with his people and nobles, appointed the

[1] De Laudibus Legum Angliæ, Cap. 27.

matter to be decided by battle between two champions."[1] In similar spirit has it been latterly proposed, amidst the amazement of the civilized world, to withdraw the point of law, now raised by Great Britain, from peaceful adjudication, and submit it to Trial by Combat. The irrational anachronism becomes more flagrant from the inconsistency of the party making it; for it cannot be forgotten, that, in times past, *on this identical point of law,* Great Britain persistently held an opposite ground from that she now takes. Hereafter, in a happier moment, this exacting power may regret the swiftness with which she undertook to gird herself for unnatural combat, on a mere point of law, with a friendly nation already struggling against domestic enemies, — especially as impartial history must record that her heavy sword was to be thrown into the scale of Slavery.

The British complaint seems narrowed to a single point, although there are yet other points, on which, had the ship been carried into port for adjudication, controversy must have arisen. The four following have been presented in the case.

1. That the seizure of the Rebel emissaries, without taking the ship into port, was wrong, *inasmuch as a navy officer is not entitled to substitute himself for a judicial tribunal.*

2. That, had the ship been carried into port, it would not have been liable on account of the Rebel emissaries, inasmuch as neutral ships are free to carry all persons not apparently in the military or naval service of the enemy.

[1] Witichindus Corbeiensis, lib. 2. Annal., ap. M. de Laurière, Préf. Ordon., Vol. I. p. xxxiii.,— quoted by Robertson, History of Charles V., Vol. I., Proofs and Illustrations, Note 22.

3. Are despatches contraband of war, so as to render the ship liable to seizure ?

4. Are neutral ships, carrying despatches, liable to be stopped between two neutral ports ?

These I shall consider in their order, giving special attention to the first, which is the pivot of the British complaint. If, in this discussion, I expose grievances which it were better to forget, be assured it is from no willingness to revive the buried animosities they once so justly aroused, but simply to exhibit the proud position which the United States early and constantly maintained.

A question of International Law should not be presented on any mere *argumentum ad hominem*. It would be of little value to show that Captain Wilkes was sustained by British authority and practice, if he were condemned by International Law as interpreted by his own country. It belongs to us now, nay, let it be our pride, at any cost of individual prepossession or transitory prejudice, to uphold that law in all its force, as it was often declared by the best men in our history, and illustrated by national acts; and let us seize the present occasion to consecrate its positive and unequivocal recognition. In exchange for the prisoners set free, we receive from Great Britain a practical assent, too long deferred, to a principle early propounded by our country, and standing forth on every page of our history. The same voice that asks for their liberation renounces in the same breath an odious pretension, for whole generations the scourge of peaceful commerce.

Great Britain, throughout her municipal history, has practically contributed to the establishment of freedom

beyond all other nations. There are at least seven institutions or principles which she has given to civilization: first, the trial by jury; secondly, the writ of *Habeas Corpus;* thirdly, the freedom of the press; fourthly, bills of rights; fifthly, the representative system; sixthly, the rules and orders of debate, constituting Parliamentary Law; and, seventhly, the principle that the air is too pure for a slave to breathe,—long ago declared, and first made a conspicuous reality, by British law. No other nation can show such peaceful triumphs. But, while thus entitled to gratitude for glorious contributions to Municipal Law, we turn with dissent and sorrow from much which she has sought to fasten upon International Law. In municipal questions, Great Britain drew inspiration from her own native Common Law, instinct with freedom; but, especially in maritime questions arising under the Law of Nations, this power seems to have acted on that obnoxious principle of the Roman Law, positively discarded in municipal questions, *Quod principi placuit legis vigorem habet,* and too often, under this inspiration, imposed upon weaker nations her own arbitrary will. A prerogative of the English monarch, mentioned in very express and pompous terms by early writers, was "the Custody of the Sea," and he is frequently styled "The Sovereign Lord and Proprietor of the Sea." But beyond these titles, the time has been when she pretended to actual sovereignty over the seas surrounding the British Isles, as far as Cape Finisterre to the south, and Vanstaten in Norway to the north. Driven from this lordly pretension, other pretensions, less local, but hardly less offensive, were avowed. The boast of "Britannia rules the waves" was practically adopted by British Prize Courts, and univer-

sal maritime rights were subjected to the special exigencies of British interests. In the consciousness of strength, and with an irresistible navy, this power has put chains upon the sea.

The commerce of the United States, as it began to whiten the ocean, was cruelly decimated. American ships and cargoes, while, in the language of Earl Russell, "pursuing a lawful and innocent voyage," suffered from British Prize Courts more than from rock or tempest. Shipwreck was less frequent than confiscation, and, when it came, was easier to bear. But the loss of property stung less than the outrage of impressment, by which foreigners, under protection of the American flag, and also American citizens, without any form of trial, and at the mere mandate of a navy officer, who for the moment acted as a judicial tribunal, were dragged from the deck which should have been to them a sacred altar. This outrage, insolently vindicated by the municipal claim of Great Britain to the services of her subjects, was enforced arrogantly and perpetually on the high seas, where Municipal Law is silent and International Law alone prevails. The belligerent right of search, derived from International Law, and justly applicable to enemy property or contraband only, and not to men, was employed for this purpose, and the quarter-deck of every English cruiser became a floating judgment-seat. The leading organ of opinion in England, on the morning after the news that the Rebels had been taken from a British ship, thus confessed the precedents of British history: —

"Unwelcome as the truth may be, it is nevertheless a truth, that we have ourselves established a system of International Law which now tells against us. In high-handed

and almost despotic manner, we have, in former days, claimed privileges over neutrals which have at different times banded all the maritime powers of the world against us. *We have insisted even upon stopping the ships of war of neutral nations and taking British subjects out of them.*" [1]

The practice began early and was continued constantly; nor did it discriminate among its victims. It is mentioned by Mr. Jefferson, and repeated by an excellent British writer on International Law, that two nephews of Washington, on their way home from Europe, were ravished from the protection of the American flag, without any judicial proceedings, and placed, as common seamen, under the ordinary discipline of British ships of war.[2] The victims were counted by thousands. Lord Castlereagh himself admitted, on the floor of the House of Commons, that an inquiry instituted by the British Government had discovered in the British fleet three thousand five hundred men claiming to be impressed Americans, — claiming only. But while unwilling to accept this large number as all Americans, his Lordship could not deny, "that, in the great extent of the British navy, there were sixteen or seventeen hundred individuals who were there contrary to the wishes of His Majesty's Government, and who had some rational ground for demanding their liberation, on the ground of their being subjects of the United States," — which, I take it, is a pleonastic circumlocution to denote that at least sixteen hundred American citizens were originally kidnapped and stolen from American ships on the high seas, to undergo the ser-

1 The Times, November 28, 1861.

2 Jefferson, Letter to Madame de Staël, May 24, 1813: Works, Vol. VI. p. 118. Manning, Commentaries on the Law of Nations, p. 375.

vitude of the British navy: all of which can be read in the Parliamentary Debates.[1] At our Department of State upwards of six thousand cases were recorded, and it was estimated that at least as many more might have occurred, of which no information had been received.[2] Thus, according to official admission of the British minister, there was reason to believe that the quarter-deck of a British man-of-war had been made a floating judgment-seat three thousand five hundred times, while, according to the records of our own State Department, it had been made a floating judgment-seat six thousand times and upwards, and each time some citizen or other person was taken from the protection of the national flag without any form of trial whatever. If a pretension so intrinsically lawless could be sanctioned by precedent, Great Britain would have succeeded in interpolating it into the Law of Nations.

The numbers sacrificed have been often denied on the other side; but candid Englishmen have made admissions which are on record. The "Edinburgh Review," at a moment when its authority was at its height, and truth prevailed above controversy, said: —

"The two lists made out in 1801 and 1812 of impressed Americans can be but a small part of the American case against us. From that fraction of their case we may, however, form some opinion on the extent to which freemen, who would be a scandal to their English ancestry, unless liberty was as dear as life, must have writhed under our practice of impressment. Prior to September, 1801, 1,132 native American sailors were set at liberty by the English Government, as having been wrongfully impressed. On the

[1] Hansard, Vol. XXIV. 601, 602, February 18, 1813.
[2] Hildreth's History of the United States, Vol. VI. p. 349.

war with America in 1812, another division of 1,422 native Americans, every one of them having been so taken, were transferred out of our men-of-war into our prisons. This is proved from English documents. Here are nearly two thousand six hundred sufferers, victims of a greater outrage than one free nation ever assumed the privilege of inflicting on another, — an outrage which no nation deserving the name of a nation, and solemnly bound to protect its meanest members, can be expected patiently to endure." [1]

Such words by one of us might be treated as the exaltation of patriotic indignation. Here, it is history written by the other side.

Even assuming, that, according to frequent British allegation, the persons taken were British subjects and not American citizens, which would make the act identical with that of Captain Wilkes, this only presents in stronger relief the precise point now in issue. Whether the victims were American citizens or British subjects, there was in each case the same forcible entry of our ships and taking from our decks.

Protest, argument, negotiation, correspondence, and war itself — unhappily the last reason of republics, as of kings — were all employed by the United States in vain to procure renunciation of the intolerable pretension. The ablest papers in our diplomatic history are devoted to this purpose; and the only serious war in which we have been engaged, until summoned to subdue the Rebellion, was to overcome by arms this very tyranny, which would not yield to reason. Beginning in the last century, the correspondence is at length closed by the recent reply of Mr. Seward to Lord Lyons. The long continued occasion of conflict is now happily

[1] Edinburgh Review, July, 1833, Vol. LVII. p. 459.

removed, and the pretension disappears forever, — to take its place among the barbaric curiosities of the past.

But I do not content myself with asserting the persistent opposition of the American Government. It belongs to the argument that I should exhibit this opposition, and the precise ground on which it was placed, — being identical with that now adopted by Great Britain. Here the testimony is complete. If you will kindly follow me, you shall see it from the beginning in the public life of our country, and in the authentic records of the National Government.

This British pretension aroused and startled the administration of Washington, and the pen of Mr. Jefferson, his Secretary of State, was enlisted against it. In a letter to Thomas Pinckney, Minister at London, dated June 11, 1792, he announced the American doctrine.

"The simplest rule will be, that the vessel being American shall be evidence that the seamen on board her are such." [1]

In another letter to the same minister, dated October 12, 1792, he calls attention to a case of special outrage.

"I enclose you a copy of a letter from Messrs. Blow and Melhaddo, merchants of Virginia, *complaining of the taking away of their sailors* on the coast of Africa by the commander of a British armed vessel. So many instances of this kind have happened, that it is quite necessary that their Government should explain themselves on the subject, and be led to disavow and punish such conduct." [2]

At a later day, also under the administration of

[1] American State Papers, Foreign Relations, Vol. III. p. 574.
[2] Ibid.

Washington, Mr. Pickering, at that time Secretary of State, in a letter to Rufus King, Minister at London, dated June 8, 1796, after repeating the rule proposed by Mr. Jefferson, says: —

"But it will be an important point gained, *if, on the high seas, our flag can protect those, of whatever nation, who shall sail under it.* And for this humanity, as well as interest, powerfully pleads." [1]

The same pretension was put forth under the administration of John Adams, and was again encountered. Mr. Marshall, afterwards the venerated Chief Justice of the United States, and at the time Secretary of State, in his instructions to Rufus King, at London, dated September 20, 1800, says: —

"The impressment of our seamen is an injury of very serious magnitude, which deeply affects the feelings and the honor of the nation. . . . . Alien seamen, not British subjects, engaged in our merchant service, ought to be equally exempt with citizens. . . . . Britain has no pretext of right to their persons or to their service. *To tear them, then, from our possession is at the same time an insult and an injury.* It is an act of violence for which there exists no palliative." [2]

The same pretension showed itself constantly under the administration of Mr. Jefferson. Throughout the eight years of his Presidency, the repeated outrages of British cruisers never for a moment allowed it to be forgotten. Mr. Madison, during this full period, was Secretary of State, and none of the varied productions of his pen are more masterly than those in which he exposed this tyranny. In the course of the discussion

[1] American State Papers, Foreign Relations, Vol. III. p. 574.
[2] Ibid., Vol. II. p. 489.

he showed the special hardship found in the fact that sailors were taken from the ship at the mere will of an officer, without any form of judicial proceedings, and thus early presented against the pretension of Great Britain the precise objection now adopted by her. Here are his emphatic words, in the celebrated instructions to Mr. Monroe, our Minister at London, dated January 5, 1804: —

"Taking reason and justice for the tests of this practice, *it is peculiarly indefensible, because it deprives the dearest rights of persons of a regular trial*, to which the most inconsiderable article of property captured on the high seas is entitled, and *leaves their destiny* to the will of an officer, sometimes cruel, often ignorant, and generally interested, by his want of mariners, in his own decisions. Whenever property found in a neutral vessel is supposed to be liable, on any grounds, to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable, then, or just, that a belligerent commander, who is thus restricted and thus responsible in a case of mere property of trivial amount, should be permitted, *without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances*, and to carry that decision into instant execution, by forcing every individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice, and humanity unite in protesting against so extravagant a proceeding." [1]

[1] American State Papers, Foreign Relations, Vol. III. p. 84.

Negotiations on this principle, thus distinctly enunciated, were intrusted at London to James Monroe, afterwards President of the United States, and William Pinkney, the most accomplished master of Prize Law our country has produced. But they were unsuccessful. Great Britain persisted. In reply to a proposal of the British commissioners, as reported in a joint letter to Mr. Madison, dated at London, September 11, 1806, the plenipotentiaries declared, —

"That it was impossible that we should acknowledge, in favor of any foreign power, *the claim to such jurisdiction on board our vessels* found upon the main ocean *as this sort of impressment implied*, — a claim as plainly inadmissible in its principle, and derogatory from the unquestionable rights of our sovereignty, as it was vexatious in its practical consequences." [1]

In another joint letter, dated at London, November 11, 1806, the same plenipotentiaries say: —

"The right [of the crew to protection under the flag] was denied by the British commissioners, *who asserted that of their Government to seize its subjects on board neutral merchant vessels on the high seas*, and who also urged that the relinquishment of it at this time would go far to the overthrow of their naval power, on which the safety of the state essentially depended." [2]

Again, in letter dated at London, April 22, 1807, Messrs. Monroe and Pinkney say of the British commissioners: —

"They stated that the prejudice of the navy, and of the country generally, was so strong *in favor of their pretension*, that the ministry could not encounter it in a direct form,

[1] American State Papers, Foreign Relations, Vol. III. p. 134.
[2] Ibid., p. 138.

and that, in truth, the support of Parliament could not have been relied on in such a case." [1]

The British commissioners were two excellent persons, — Lord Holland and Lord Auckland; but, though friendly to the United States in their declarations, and Liberals in politics, they were powerless.

At home the question continued to be discussed by able writers. Among those whose opinions were of the highest authority was the former President, John Adams, who, from his retirement at Quincy, sent forth a pamphlet, dated January 9, 1809, in which the British pretension was touched to the quick, and again was presented the precise objection now urged by Great Britain against the seizure of the two Rebels. Depicting the scene, when one of our ships is boarded by a British cruiser, he says: —

"The lieutenant is to be the judge, ... the midshipman is to be clerk, and the boatswain sheriff or marshal. . . . . It is impossible to figure to ourselves in imagination this solemn tribunal and venerable judge without smiling, till the humiliation of our country comes into our thoughts and interrupts the sense of ridicule by the tears of grief or vengeance." [2]

At last all redress through negotiation was found impossible; and this pretension, aggravated into multitudinous tyranny, was openly announced to be one of the principal reasons for the declaration of war against Great Britain in 1812. In his message to Congress, dated June 1 of that year, Mr. Madison, who was now President, thus exposed its offensive character; and his

[1] American State Papers, Foreign Relations, Vol. III. p. 160.

[2] The Inadmissible Principles of the King of England's Proclamation of October 16, 1807, considered: Works, Vol. IX. p. 322.

words, directed against a persistent practice, are now echoed by Great Britain in the single instance which has accidentally occurred on our side.

"Could the seizure of British subjects in such cases be regarded as within the exercise of a belligerent right, the acknowledged laws of war, which forbid an article of captured property to be adjudged without a regular investigation before a competent tribunal, *would imperiously demand the fairest trial where the sacred rights of persons were at issue. In place of such a trial, these rights are subjected to the will of every petty commander.*" [1]

While the war was waging, the subject was still discussed. Mr. Grundy, of Tennessee, in the House of Representatives, in a report from the Committee on Foreign Affairs, said: —

"A subaltern or any other officer of the British navy ought not to be arbiter in such a case. The liberty and lives of American citizens ought not to depend on the will of such a party." [2]

Such was the American ground, occupied from the beginning without interruption, and from the beginning most persistently contested by Great Britain.

The British pretension was unhesitatingly proclaimed in the Declaration of the Prince Regent, afterwards George the Fourth, given at the palace of Westminster, January 9, 1813.

"The President of the United States has, it is true, since proposed to Great Britain an armistice: not, however, on the admission that the cause of war hitherto relied on was removed, but on condition that Great Britain, as a preliminary step, should do away a cause of war now brought forward

[1] American State Papers, Foreign Relations, Vol. III. p. 405.
[2] Ibid., p. 605.

as such for the first time, — namely, *that she should abandon the exercise of her* UNDOUBTED RIGHT *of search to take from American merchant vessels British seamen, the natural-born subjects of His Majesty.* . . . .

"His Royal Highness can never admit, that, in the exercise of *the* UNDOUBTED *and hitherto undisputed right of searching neutral merchant vessels in time of war, the impressment of British seamen*, when found therein, *can be deemed any violation of a neutral flag.* Neither can he admit that the taking such seamen from on board such vessels *can be considered by any neutral state as a hostile measure or a justifiable cause of war.*"[1]

In the semi-official counter statement presented by Alexander J. Dallas, at the time Secretary of the Treasury, entitled "Exposition of the Causes and Character of the late War," this pretension is thus described: —

"But the British claim, expanding with singular elasticity, was soon found to include *a right to enter American vessels on the high seas*, in order to search for and seize all British seamen; it next embraced the case of every British subject; and finally, in its practical enforcement, it has been extended to every mariner who could not prove upon the spot that he was a citizen of the United States."[2]

The war was closed by the Treaty at Ghent; but, perversely, the British pretension was not renounced. Other negotiations, in 1818 under President Monroe, in 1823 also under Monroe, and again in 1827 under John Quincy Adams, expressly to procure its renunciation, were all unavailing. Of these various negotiations I forbear all details; but the language of Mr. Rush, our

[1] Annual Register, 1813, Vol. LV. pp. 337, 339.

[2] Exposition, pp. 6, 7. This pamphlet is preserved in the Appendix to the Life and Writings of Alexander J. Dallas, by his Son, George Mifflin Dallas.

Minister at London, who pressed this question assiduously for several years, beginning with 1818, should not be omitted. The case was never stated more strongly.

"Let the steps by which the enforcement proceeds be attended to. A British frigate, in time of war, meets an American merchant vessel at sea, boards her, and, under terror of her guns, takes out one of the crew. The boarding lieutenant asserts, and, let it be admitted, believes, the man to be a Briton. By this proceeding the rules observed in deciding upon any other fact, where individual or national rights are at stake, are overlooked. *The lieutenant is accuser and judge. He decides upon his own view, instantly.* The impressed man is forced into the frigate's boat, and the case ends. *There is no appeal, no trial of any kind;* more important still, there is no remedy, should it appear that a wrong has been committed."[1]

At last, in 1842, at the Treaty of Washington, Mr. Webster, calmly setting aside all idea of further negotiation on this pretension, and without even proposing any stipulation with regard to it, deliberately announced the principle irrevocably adopted by our Government. It was that announced at the beginning by Mr. Jefferson. This document is one of the most memorable in our history, and it bears directly on the existing controversy, when, in exposing the British pretension, it says: —

"But the lieutenant of a man-of-war, having necessity for men, *is apt to be a summary judge*, and his decisions will be quite as significant of his own wants and his own power as of the truth and justice of the case."[2]

[1] Memoranda of a Residence at the Court of London, 2d edit., pp. 200, 201.

[2] Letter to Lord Ashburton, August 8, 1842: Webster's Works, Vol. VI. p. 323; Executive Documents, 27th Cong. 3d Sess., Senate, No. 1, p. 142.

At a later day still, on the very eve of recent events, we find General Cass, as Secretary of State, in elaborate instructions to our ministers in Europe, dated June 27, 1859, declaring principles which may properly control the present question. He says:—

"It is obvious, from the temper of the age, that the present is no safe time to assert and enforce pretensions on the part of belligerent powers affecting the interest of nations at peace, *unless such pretensions are clearly justified by the Law of Nations.* . . . . The stopping of neutral vessels upon the high seas, their forcible entrance, and the overhauling and examination of their cargoes, the seizure of their freight *at the will of a foreign officer*, the frequent interruption of their voyages by compelling them to change their destination in order to seek redress, and, *above all, the assumption of jurisdiction by a foreign armed party over what has been aptly termed the extension of the territory of an independent state, and with all the abuses which are so prone to accompany the exercise of unlimited power*, where responsibility is remote, — these are, indeed, serious 'obstructions,' little likely to be submitted to in the present state of the world, without a formidable effort to prevent them."[1]

Such is an authentic history of this British pretension, and of the manner in which it has been met by our Government. And now the special argument formerly employed by us against an intolerable pretension is invoked by Great Britain against the error of taking two Rebel emissaries from a British packet ship. If Captain Wilkes is right, then, throughout all these international debates, extending over at least two generations, have we been wrong.

[1] Executive Documents, 36th Cong. 1st Sess., Senate, No. 2, pp. 28, 29.

It is sometimes said, that the steam packet, having on board the Rebel emissaries, was on this account liable to capture, and therefore the error of Captain Wilkes in taking the emissaries was simply of form, and not of substance. I do not stop to consider whether an exercise of summary power, against which our nation has so constantly protested, can, under any circumstances, be an error of form merely; for the national policy, most positively declared in diplomacy, and also attested in numerous treaties, leaves small room to doubt that a neutral ship with enemy passengers, not in the military or naval service, is not liable to capture, and therefore the whole proceeding was wrong, not only because the passengers were taken from the ship, but also because the ship, howsoever guilty morally, was not guilty legally, in receiving such passengers on board. If this question were argued on English authorities, it might be otherwise; but according to American principles, the ship was legally innocent. Of course, I say nothing of the moral guilt which an indignant patriotism will find forever indelible in that ship.

In the middle of the last century, the Swiss publicist Vattel declared, that, on the breaking out of war, we are no longer under obligation to leave the enemy in free enjoyment of his rights; and this principle he applied loosely to the transit of ambassadors.[1] Sir William Scott, afterwards known in the English peerage as Lord Stowell, quoting this authority, at the beginning of the present century, let fall these words:—

"You may stop the ambassador of your enemy on his passage."[2]

[1] Le Droit des Gens, Liv. IV. ch. 7, § 85.

[2] The Caroline, 6 Robinson, Admiralty R., 468.

And this curt proposition, though in some respects indefinite, has been often since repeated by writers on the Law of Nations. On its face it leaves the question unsettled, whether the emissaries of an unrecognized Government can be stopped. But there is another case in which the same British judge, who has done so much to illustrate International Law, has used language which seems to embrace not only authentic ambassadors, but also pretenders to this character, and all others who are public agents of the enemy. Says this eminent magistrate: —

"It appears to me on *principle* to be but reasonable, that, whenever it is of sufficient importance to the enemy that *such persons should be sent out on the public service, at the public expense*, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations." [1]

Admit that the emissaries of an unrecognized Government cannot be recognized as ambassadors, with the liabilities as well as immunities of this character, yet, in the face of these words, it is difficult to see how a Government bowing habitually to the authority of Sir William Scott, and regarding our Rebels as "belligerents," can assert that a steam packet, conveying emissaries from these belligerents, "sent out on the public service, at the public expense," was, according to the language of Earl Russell, "pursuing a lawful and innocent voyage." At least, in this assertion, the British Government seems to turn its back again upon its own history, or it sets aside the facts so openly boasted with regard to the public character of these fugitives.

1 The Orozembo, 6 Robinson, Admiralty R. 434.

On this question British policy may change with circumstances, and British precedents may be uncertain, but the original American policy is unchangeable, and the American precedents which illustrate it are solemn treaties. The words of Vattel and the judgments of Sir William Scott were well known to the statesmen of the United States; and yet, in the face of these authorities, which have entered so largely into this debate, the National Government at an early day deliberately adopted a contrary policy, to which for half a century there was steady adherence. It was plainly declared *that only soldiers or officers could be stopped*, thus positively excluding the idea of stopping ambassadors, or emissaries of any kind, not in the military or naval service. Mr. Madison, who more than any other person shaped our national policy on Maritime Rights, has stated it on this question. In his remarkable despatch to Mr. Monroe, at London, dated January 5, 1804, he says: —

"The article renounces the claim to take from the vessels of the neutral party, on the high seas, any person whatever *not in the military service of an enemy*, an exception which we admit to come within the Law of Nations, on the subject of contraband of war. *With this exception, we consider a neutral flag on the high seas as a safeguard to those sailing under it.*"[1]

Then again, in the same despatch, this statesman says: —

"Great Britain must produce, then, an exception in the Law of Nations in favor of the right she contends for. But in what written and received authority will she find it? In

[1] Amer'can State Papers, Foreign Relations, Vol. III. p. 83.

what usage, except her own, will it be found? . . . . But nowhere will she find an exception to this freedom of the seas, and of neutral flags, which justifies the taking away of any person, *not an enemy in military service*, found on board a neutral vessel." [1]

And once more, in the same despatch, he says: —

"Whenever a belligerent claim against persons on board a neutral vessel is referred to in treaties, *enemies in military service alone* are excepted from the general immunity of persons in that situation; *and this exception confirms the immunity of those who are not included in it.*" [2]

In pursuance of this principle, thus clearly announced and repeated, Mr. Madison instructed Mr. Monroe to propose a convention between the United States and Great Britain containing the following stipulation: —

"No person whatever shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other, *unless such person be at the time in the military service of an enemy of such other party.*" [3]

Mr. Monroe pressed this stipulation most earnestly upon the British Government; but, though treated courteously, he could get no satisfaction. Lord Harrowby, the Foreign Secretary, in one of his conversations, "expressed concern to find the United States opposed to Great Britain on certain great neutral questions, in favor of the doctrines of the Modern Law, which he

[1] American State Papers, Foreign Relations, Vol. III. p. 84.
[2] Ibid.
[3] Ibid., p. 82.

termed *novelties*";[1] and Lord Mulgrave, who succeeded this accomplished nobleman, persevered in the same dissent. Mr. Monroe writes, under date of 18th October, 1805:—

"On a review of the conduct of this Government towards the United States from the commencement of the war, I am inclined to think that the delay which has been so studiously sought in all these concerns is the part of a system, and that it is intended, as circumstances favor, to subject our commerce, at present and hereafter, to every restraint in their power."[2]

Afterwards Mr. Monroe was joined in the mission to London, as we have already seen, by Mr. Pinkney, and the two united in again presenting this same proposition to the British Government.[3] It was rejected, although the ministry of Mr. Fox, who was then in power, seems to have afforded at one time the expectation of an agreement.

While these distinguished plenipotentiaries were pressing this principle at London, Mr. Madison was maintaining it at home. In an unpublished communication to Mr. Merry, the British minister at Washington, bearing date 9th April, 1805, which I extract from the files of the State Department, he declared:—

"The United States cannot accede to the claim of any nation to take from their vessels on the high seas *any description of persons, except soldiers* in the actual service of the enemy."[4]

In a reply bearing date 12th April, 1805, this princi-

1 American State Papers, Foreign Relations, Vol. III. p. 99.
2 Ibid., p. 107.
3 Ibid., p. 137.
4 MS.

ple was positively repudiated by the British minister; so that the two Governments were ranged unequivocally on opposite sides. And this attitude was continued. In the subsequent negotiations at London, intrusted to Mr. Rush, in 1818, we find the two powers face to face. The Foreign Secretary was the celebrated Lord Castlereagh, who, according to Mr. Rush, did not hesitate to complain, —

"That we gave to our ships a character of inviolability that Britain did not: that we considered them as part of our soil, clothing them with like immunities." [1]

To which Mr. Rush replied: —

"That we did consider them as thus inviolable, so far as to afford protection to our seamen; but that we had never sought to exempt them from search for rightful purposes, viz., for enemy's property, articles contraband of war, or *men in the land or naval service of the enemy. These constituted the utmost limit of the belligerent claim, as we understood the Law of Nations.*" [2]

Two champions were never more completely opposed than were the two Governments on this question.

The treaties of the United States with foreign nations are in harmony with the principle so energetically proposed and upheld, — beginning with the Treaty of Amity and Commerce with France in 1778, and ending only with the Peruvian treaty as late as 1851. Here is the provision in the treaty with France, negotiated by Franklin, whose wise forethought is always conspicuous: —

[1] Memoranda of a Residence at the Court of London, 2d edit., p. 306.
[2] Ibid., pp. 306, 307.

"And it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that, *although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemies.*" [1]

The obvious effect of this stipulation is two-fold: first, that enemies, unless soldiers in actual service, shall not be taken out of a neutral ship; and, secondly, that such persons are not contraband of war so as to affect the voyage of a neutral with illegality. Such was the proposition of Franklin, of whom it has been said, that he snatched the lightning from the skies, and the sceptre from tyrants. That he sought to snatch the trident also is attested by his whole diplomacy, of which this proposition is part.

But the same principle is found in succeeding treaties, sometimes with a slight change of language. In the treaty with the Netherlands, negotiated by John Adams in 1782, the exception is confined to "military men actually in the service of an enemy," [2]; and this same exception is also found in the treaty with Sweden in 1783,[3] with Prussia in 1785,[4] with Spain in 1795,[5] with France in 1800,[6] with Colombia in 1824,[7]

[1] Statutes at Large, Vol. VIII. pp. 24, 26.
[2] Ibid., p. 38.
[3] Ibid., p. 64.
[4] Ibid., p. 90.
[5] Ibid., p. 146.
[6] Ibid., p. 186.
[7] Ibid., p. 312.

with Central America in 1825,[1] with Brazil in 1828,[2] with Mexico in 1831,[3] with Chile in 1832,[4] with Venezuela in 1836,[5] with Peru-Bolivia in 1836,[6] with Ecuador in 1839,[7] with New Granada in 1846,[8] with Guatemala in 1849,[9] with San Salvador in 1850,[10] and in the treaty with Peru in 1851.[11]

Such is unbroken testimony, in the most solemn form, to the policy of our Government. In some of the treaties the exception is simply "soldiers," in others it is "officers or soldiers." Observe, too, that every treaty testifies to the opinions of the Administration that negotiated it, and of at least two thirds of the Senate that ratified it, — so that this large number of treaties constitutes a mass of authority from which there can be no appeal, embracing all the great names of our history. It is true that among these treaties there is none with Great Britain; but it is also true that this is simply because our mother country refused assent, when this principle was presented as an undoubted part of International Law which our Government desired to confirm by treaty.

Clearly and beyond all question, according to American principle and practice, the ship was not liable to capture on account of the presence of emissaries, "not soldiers or officers"; nor could such emissaries be legally taken from the ship. But the completeness of this authority is increased by the concurring testimony of the Continent of Europe. Since the Peace of Utrecht,

1 Statutes at Large, Vol. VIII. p. 328.
2 Ibid., p. 393.
3 Ibid., p. 416.
4 Ibid., p. 436.
5 Ibid., p. 474.
6 Ibid., p. 490.
7 Ibid., p. 540.
8 Ibid., Vol. IX. p. 888.
9 Ibid., Vol. X. p. 880.
10 Ibid., p. 894.
11 Ibid., p. 936.

in 1713, the policy of the Continental States has generally refused to sanction the removal of enemies from a neutral ship, unless military men in actual service. And now, since this debate has commenced, we have the positive testimony of the French Government to the same principle, given with special reference to the present case. M. Thouvenel, the Minister of the Emperor for Foreign Affairs, in a recent letter communicated to Mr. Seward, and published with the papers before the Senate, earnestly insists that the Rebel emissaries, not being military persons actually in the service of the enemy, were not subject to seizure on board a neutral ship.[1]

I leave this question with the remark, that it is perhaps Great Britain alone whose position here can be brought into doubt. Originally a party to the Treaty of Utrecht, this imperial power soon saw that its provisions in favor of Maritime Rights interfered plainly with that dictatorship of the sea which Britannia was then grasping. Maritime Rights were repudiated, and her Admiralty Courts have ever since enforced this repudiation.

Still another question occurs. Beyond all doubt there were "despatches" on board the ship, — such "despatches" as rebels can write. Public report, the statement of persons on board, and the boastful declaration of Jefferson Davis in an official document that these emissaries were proceeding under appointment from him, which appointment would be a "despatch" of the highest character, — and necessarily with instructions also, being another "despatch," — seem to place

[1] Executive Documents, 37th Cong. 2d Sess., Senate, No. 8, p. 13.

this beyond denial. Assuming such fact, very notorious at the time of sailing, the ship was liable to capture and to be carried off for adjudication, according to British authorities, — unless the positive judgment of Sir William Scott in the case of the Atalanta,[1] and also the Queen's Proclamation at the commencement of the Rebellion, enumerating "despatches" among contraband articles, are treated as nullities, or so far modified in application as to be words and nothing more. Even if the judgment be uncertain and inapplicable, the Queen's Proclamation is not. Does it not warn British subjects against "carrying officers, soldiers, *despatches*, arms, military stores or materials, ... *for the use or service* of either of the said contending parties"? And we have the authority of a recent English writer, quoted by the English press, who characterizes the conveyance of despatches as "a *service*, which, in whatever degree it exists, can only be considered in one character, as an act of the most noxious and hostile nature."[2]

But however binding and peremptory these authorities in Great Britain, they cannot be accepted to reverse a standing policy of the United States. For the sake of precision in rights claimed and accorded on the ocean, our Government has explained in treaties what was meant by contraband. As early as 1778, in the treaty with France negotiated by Franklin, after specifying contraband articles, without including despatches, it is declared that

"Free goods are all other merchandises and *things* which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods."[3]

[1] 6 Robinson, Admiralty R., 440.

[2] Pratt, Law of Contraband of War, p. 58.

[3] United States Statutes at Large, Vol. VIII. p. 26.

This was before the judgment of Sir William Scott, recognizing despatches as contraband; but in other treaties subsequent to this well-known judgment, and therefore practically discarding it, after enumerating contraband articles, without specifying "despatches," the following provision is introduced: —

"All other merchandises and *things* not comprehended in the articles of contraband explicitly enumerated and classified as above shall be held and considered as free." [1]

Then again John Quincy Adams, in his admirable draught of a treaty for the reform of Maritime Rights, after declaring specifically what shall be "under the denomination of contraband of war," without including "despatches," adds: —

"All the above articles, *and none others*, shall be subject to confiscation, whenever they are attempted to be carried to an enemy." [2]

Thus we have not only words of enumeration without mention of "despatches," but also words of exception. These testimonies constitute the record of our nation on this question.

Here it may be remarked, that, while decisions of British Admiralty Courts are freely cited, there are none of our Supreme Court. If any existed, they would be of the highest value; but there are none, and I can imagine no better reason than because the question is so settled by treaties and diplomacy as to be beyond judicial inquiry.

The conclusion follows, that, according to American

[1] Convention with Colombia, 1824: Statutes at Large, Vol. VIII. p. 312; and later treaties, *passim*.

[2] Executive Documents, 33d Cong. 1st Sess., H. of R., No. 111, p. 13.

principle and practice, the ship was not liable on account of despatches on board. And here again we have the testimony of Continental Europe, if we may accept the statement of Hautefeuille, and it would seem also that of the French Government, in the recent letter of M. Thouvenel.

The French champion of neutral rights vindicates the immunity of despatches against English construction in pointed language.

"We must be permitted to protest against the pretension set up by the Americans of considering the transportation of despatches as an act of contraband, and consequently of maintaining that the stopping of the Trent is justified by the fact that there were found on board despatches of the Confederate Government. This pretension, which has always been maintained by England, and which even at the present day is still avowed by its journals, is wholly contrary to all the principles of International Law."[1]

But Continental testimony is not uniform. So considerable an authority as Heffter recognizes the liability of a neutral vessel for "*voluntarily* forwarding despatches to or for a belligerent."[2] This is on general grounds, independent of treaty or national usage.

Even if the ship were liable, so that Captain Wilkes would have been justified in bringing the Trent into port for adjudication, it does not follow that the two Rebels could be summarily seized and taken therefrom. Here again we are brought to that American principle which condemns the pretension of seizing

[1] Hautefeuille, Questions de Droit International Maritime: Affaires du Trent et du Nashville, p. 13. See also an earlier pamphlet, — Quelques Questions de Droit International Maritime, à propos de la Guerre d'Amérique (Leipzig et Paris, 1861).

[2] Europäische Völkerrecht der Gegenwart (1855), § 157 b, p. 276.

even enemies on board a neutral vessel, unless they are soldiers in actual service, and has constantly cried out against the desecration of our decks by British officers seizing our peaceful sailors under claim of allegiance to the British crown.

There is yet another question which remains. Assuming that despatches are contraband, would their presence on board a neutral ship, sailing between two neutral ports, render the voyage illegal? The mail steamer was sailing between Havana, a port of Spain, and St. Thomas, a port of Denmark. Here again, if we bow to English precedent, the answer is prompt. The British oracle has spoken. In a well-considered judgment, Sir William Scott declares that despatches taken on board a neutral ship, sailing from a neutral country and bound for another neutral country, are contraband, — but that, where there is reason to believe the master ignorant of their character, "it is not a case in which the property is to be confiscated, although in this, *as in every other instance in which the enemy's despatches are found on board a vessel,* he has justly subjected himself to all the inconveniences of seizure and detention, and to all the expenses of those judicial inquiries which they have occasioned."[1] Such is the Law of Nations according to Great Britain.

Even if this rule had not been positively repudiated by the United States, it is so inconsistent with reason, and, in the present condition of maritime commerce, so utterly impracticable, that it can find little favor. If a neutral voyage between two neutral ports is rendered illegal on this account, then the postal facilities of the

[1] The Rapid, Edwards, Admiralty R., 231.

world, and the costly enterprises by which they are conducted, are exposed to interruptions under which they must at times be crushed, to the infinite detriment of universal commerce. If the rule is applicable in one sea, it is applicable in all seas, and there is no part of the ocean which may not be vexed by its enforcement. It would reach to the Mediterranean and to the distant China seas as easily as to the Bahama Channel, and be equally imperative in the chops of the British Channel. Not only the stately mail steamers traversing the ocean would be subject to detention and possible confiscation, but the same penalties must attach to the daily packets between Dover and Calais. The simple statement of such a consequence, following directly from the British rule, throws instant doubt over it, which the eloquent judgment of Sir William Scott cannot remove.

Here again our way is clear. American principle and practice have settled this question also. Wheaton commences his statement of the Law of Contraband by saying, "The general freedom of neutral commerce with the respective belligerent powers is subject to some exceptions. *Among these is the trade with the enemy* in certain articles called contraband of war."[1] It will be perceived that the trade must be *with the enemy,* not with the neutral. And here the author followed the suggestions of reason and the voice of American treaties. In the celebrated treaty with Great Britain negotiated by John Jay in 1794, after an enumeration of contraband articles, it is expressly said, "And all the above articles are hereby declared to be just objects of confiscation, *whenever they are attempted to be carried*

[1] Elements of International Law, Part IV. ch. 3, § 24.

to an enemy."[1] Of course, when on the way to neutrals, they are free. And the early treaties negotiated by Benjamin Franklin and John Adams are in similar spirit; and in precisely the same sense is the treaty with Prussia in 1828, which in its twelfth article revives the thirteenth article of our treaty with that same power in 1799, by which contraband is declared to be detainable *only when carried to an enemy.* Even if this rule were of doubtful authority with regard to articles of acknowledged contraband, it is positive with regard to despatches, which, as we have already seen, are among "merchandises and *things*" declared free; with regard to which our early treaties secured the greatest latitude. Nothing can be broader than the words in the treaty of 1778 with France: —

"So that they may be transported and carried *in the freest manner* by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted as are at that time besieged, blocked up, or invested."[2]

But the provision in the treaty with the Netherlands of 1782 is equally broad: —

"So that all *effects* and merchandises which are not expressly before named may, *without any exception and in perfect liberty*, be transported by the subjects and inhabitants of both allies from and to places belonging to the enemy, excepting only the places which at the same time shall be besieged, blocked, or invested; and those places only shall be held for such which are surrounded nearly by some of the belligerent powers."[3]

[1] United States Statutes at Large, Vol. VIII. p. 125.
[2] Ibid., p. 26.
[3] Ibid., p. 46.

If the immunity of neutral ships needed further confirmation, it would be found again in the concurring testimony of the French Government, conveyed in the recent letter of M. Thouvenel,[1] — which is so remarkable for its brief, but comprehensive, treatment of the questions involved in this controversy. I know not how others may feel, but I like to believe that this communication, when rightly understood, may be accepted as a token of friendship for us, and also as a contribution to those Maritime Rights for which France and the United States in times past have done so much together. This eminent minister does not hesitate to declare, that, if the flag of a neutral cannot completely cover persons and merchandise in a voyage between two neutral ports, then its immunity will be but a vain word.

As I conclude what I have to say on contraband in its several divisions, I venture to assert that there are two rules in regard to it which the traditional policy of our country has constantly declared, and has embodied in treaty stipulations with every power that could be persuaded to adopt them: first, that no article is contraband, unless expressly enumerated and specified as such by name; secondly, that, when such articles, so enumerated and specified, are found by the belligerent on board a neutral ship, the neutral shall be permitted to deliver them to the belligerent, whenever, by reason of bulk or quantity, such delivery is possible, and then the neutral shall, without further molestation, proceed with all remaining innocent cargo to his destination, being any port, neutral or hostile, not at the time actually blockaded.

[1] Executive Documents, 37th Cong. 2d Sess., Senate, Doc. 8, p. 13.

Such was the early fixed policy of our country with regard to contraband in neutral bottoms. It is recorded in several of our earlier European treaties. Approximation to it is found in other European treaties, showing our constant effort in this direction. But this policy was not supported by the British theory and practice of International Law, especially active during the wars of the French Revolution; and to this fact may be ascribed something of the difficulty which our Government encountered in effort to secure for this liberal policy the complete sanction of European nations. But in negotiations with the Spanish-American States the theory and practice of Great Britain were less felt; and so to-day that liberal policy, embracing the two rules touching contraband, is, among all American nations, the public law, stipulated and fixed in solemn treaties. I do not quote texts, but I refer to all these treaties, beginning with the convention between the United States and Colombia in 1824. These rules, if not directly conclusive on the question of contraband, at least help to exhibit that spirit of emancipation with which our country has approached the great subject of Maritime Rights.

Of course this discussion proceeds on the assumption that the Rebels are regarded as belligerents, which is the character especially accorded by Great Britain. If they are not regarded as belligerents, then is the proceeding of Captain Wilkes indubitably illegal and void. To a political offender, however deep his guilt, though burdened with the undying execrations of all honest men, and bending beneath the consciousness of the ruin he has brought upon his country, the asylum of a foreign

jurisdiction is sacred, whether on shore or sea; and it is among the proudest boasts of England, at least in recent days, that the exiles of defeated democracies, as well as of defeated dynasties, have found a sure protection beneath her meteor flag. And yet this lofty power has not always accorded to other flags what she claimed for her own. One of the objections made to any renunciation of impressment by Great Britain, at the beginning of the present century, was, "that facility would be given, particularly in the British Channel, by the immunity claimed for American vessels, *to the escape of traitors*"[1]: thus assuming, not only that traitors — companions of Robert Emmet, in Ireland, or companions of Horne Tooke, in England — ought to be arrested on board a neutral ship, but that impressment was needed for this purpose. This flagrant instance cannot be a precedent for the United States, which has maintained the right of asylum as firmly always as it has rejected the pretension of impressment.

If I am correct in this review, then the conclusion is inevitable. The seizure of the Rebel emissaries on board a neutral ship cannot be justified, according to declared American principles and practice. There is no single point where the seizure is not questionable, unless we invoke British precedents and practice, which, beyond doubt, led Captain Wilkes into his mistake. In the solitude of his ship he consulted familiar authorities at hand, and felt that in Vattel and Sir William Scott, as quoted by eminent writers, he had guides, while the inveterate practice of the British navy lighted his way.

[1] Mr. Madison to Mr. Monroe, January 5, 1804: American State Papers, Foreign Relations, Vol. III. p. 86.

He was mistaken. There was a better example: it was the constant, uniform, unhesitating practice of his own country on the ocean, conceding always the greatest immunities to neutral ships, unless sailing to blockaded ports, refusing to consider despatches as contraband of war, refusing to consider persons other than soldiers or officers as contraband of war, and protesting always against an adjudication of personal rights by summary judgment of the quarter-deck. Had these well-attested precedents been in his mind, the gallant captain would not, even for a moment, have been seduced from allegiance to those principles which constitute part of our country's glory.

Mr. President, let the Rebels go. Two wicked men, ungrateful to their country, with two younger confederates, are set loose with the brand of Cain upon their foreheads. Prison-doors are opened; but principles are established which will help to free other men, and to open the gates of the sea. Never before in her renowned history has Great Britain ranged herself on this side. Such an event is an epoch. "*Novus sæclôrum nascitur ordo.*" To the liberties of the sea this power is at last committed. To a certain extent the great cause is now under her tutelary care. If the immunities of passengers not in the military or naval service, as well as of sailors, are not directly recognized, they are at least implied; if neutral rights are not ostentatiously proclaimed, they are at least invoked; while the whole pretension of impressment, so long the pest of neutral commerce, and operating only through lawless adjudication of the quarter-deck, is made absolutely impossible. Thus is the freedom of the sea enlarged in the name of peaceful

neutral rights, not only by limiting the number of persons exposed to the penalties of war, but by driving from it the most offensive pretension that ever stalked upon its waves. Farewell to kidnapping and man-stealing on the ocean! To such conclusion Great Britain is irrevocably pledged. Nor treaty nor bond is needed. It is sufficient that her late appeal can be vindicated only by renunciation of early, long-continued tyranny. Let her bear the Rebels back. The consideration is ample; for the sea became free as this altered power went forth, steering westward with the sun, on an errand of liberation.

In this surrender, if such it may be called, the National Government does not even "stoop to conquer." It simply lifts itself to the height of its own original principles. The early efforts of its best negotiators, the patriot trials of its soldiers in an unequal war, at length prevail, and Great Britain, usually so haughty, invites us to practise upon principles which she has so strenuously opposed. There are victories of force: here is a victory of truth. If Great Britain has gained the custody of two Rebels, the United States have secured the triumph of their principles.

As this result is in conformity with our cherished history, it is superfluous to add other considerations; and yet I venture to suggest that estranged sympathies abroad may be secured again by open adhesion to principles which have the support already of Continental Europe, smarting for years under British pretensions. The powerful organs of opinion on the Continent are also with us. Hautefeuille, whose earnest work on the Law of Nations[1] is the arsenal of neu-

[1] Des Droits et des Devoirs des Nations Neutres en Temps de Guerre Maritime. 4 vol. Paris, 1848.

tral rights, has entered into this debate with a direct proposition for the release of the emissaries, as a testimony to the true interpretation of International Law. Another distinguished Frenchman, Agénor de Gasparin, whose impassioned love of liberty and enlightened devotion to our country impart to his voice all the persuasion of friendship, has made a similar appeal.[1] And a journal which of itself is an authority, the *Revue des Deux Mondes*, declares, in words which harmonize with what I have said to-day, that, "in disavowing a capture effected by the arbitrary initiative of a naval officer, without any of the guaranties of legal justice, without the intervention and the sanction of a Court of Admiralty, the United States, far from renouncing any of their political principles, would only render homage to the doctrine which they have ever professed on the rights of neutrals." The same distinguished journal proceeds: "It would be in reality a true triumph for this doctrine so to apply it to the profit of a nation and of a government which have always contested or violated the rights of neutrals, but which would be henceforward constrained to the abandonment of their arbitrary pretensions by the conspicuous authority of such a precedent."[2]

Nor is this triumph enough. The sea-god will in future use his trident less; but the same principles which led to the present renunciation of early pretensions naturally conduct to yet further emancipation of the sea. The work of maritime civilization is not finished. And here the two nations, equally endowed by commerce, and matched together, while surpassing all

[1] Une Parole de Paix sur le Différend entre l'Angleterre et les États-Unis.
[2] Revue des Deux Mondes, Nov.–Déc., 1861, p. 1014.

others, in peaceful ships, may gloriously unite in setting up new pillars, to mark new triumphs, rendering the ocean a highway of peace, instead of a bloody field.

The Congress of Paris, in 1856, where were assembled the plenipotentiaries of Great Britain, France, Austria, Prussia, Russia, Sardinia, and Turkey, has already led the way. Adopting the early policy of the United States, often proposed to foreign nations, this congress authenticated two important changes in restraint of belligerent rights: first, that the neutral flag shall protect enemy goods, except contraband of war; and, secondly, that neutral goods, except contraband of war, are not liable to capture under an enemy's flag. This is much. Another proposition, for the abolitition of Privateering, was defective in two respects: first, because it left nations free to employ private vessels under public commission as ships of the navy, and therefore was nugatory; and, secondly, because, if not nugatory, it was too obviously in the special interest of Great Britain, which, through her commanding navy, would be left at will to rule the sea. No change can be practicable which is not equal in advantage to all nations; for the Equality of Nations is not a dry dogma merely of International Law, but a vital sentiment common to all. This cannot be overlooked; and every proposition must be brought sincerely to its equitable test.

There is a way in which privateering may be effectively abolished without shock to the Equality of Nations. A simple proposition, assuring private property on the ocean the same immunity it now enjoys on land, will at once abolish privateering, and relieve commerce on the ocean from its greatest perils, so that, like commerce on land, it will be undisturbed, except

by illegal robbery and theft. Such a proposition must operate for the equal advantage of all. On this account, and in the policy of peace, always cultivated by our Republic, it has been already presented to other nations. You have not forgotten the important paper in which Mr. Marcy did this service,[1] and the favor it found with European powers, always excepting Great Britain, whose opposition was too potential. But this vast cause was never commended with more force than by John Quincy Adams, as Secretary of State, when, in a masterly despatch, he declared that "private war, banished by the tacit and general consent of Christian nations from their territories, has taken its last refuge upon the ocean, and there continues to disgrace and afflict them by a system of licensed robbery, bearing all the most atrocious characters of piracy."[2] The Governments of Europe were invited to enter into conventions by which "all warfare against private property upon the sea is disclaimed and renounced," and at the same time the final suppression of the slave-trade assured, so that the freedom of the sea was associated with the freedom of men.[3] In the same humane interest, Henry Clay, as Secretary of State, invited Great Britain "to agree to the abolition of privateering, and no longer to consider private property on the high seas as lawful prize of war."[4] In such a cause the effort alone was noble.

[1] Letter to M. de Sartiges, July 28, 1856: President's Message and accompanying Documents, December, 1856: Executive Documents, 34th Cong. 3d Sess., H. of R., No. 1, pp. 35–43.

[2] Letter to Mr. Rush, July 28, 1823: Executive Documents, 33d Cong. 1st Sess., H. of R., No. 111, p. 6.

[3] Letter to Mr. Sheldon, August 13, 1823, Ibid., p. 17; Letter to Mr. Brown, December 23, 1823, Ibid., p. 19.

[4] Letter to Mr. Gallatin, June 19, 1826: Ibid., p. 37.

To complete the efficacy of this reform, closing the gate against belligerent pretensions, Contraband of War should be abolished, so that all ships may navigate the ocean freely, without peril or detention from the character of persons or things on board: and here I only follow the Administration of Washington, enjoining upon John Jay, in his negotiation with England, to seek security for neutral commerce, particularly "by abolishing contraband *altogether*."[1] The Right of Search, which, on outbreak of war, becomes an omnipresent tyranny, subjecting every neutral ship to the arbitrary invasion of every belligerent cruiser, would then disappear. It would drop, as the chains from an emancipated slave; or rather, it would exist only as an occasional agent, under solemn treaties, in the war waged by civilization against the slave-trade; and then it would be proudly recognized as an honorable surrender to the best interests of humanity, glorifying the flag which made it.

With the consummation of these reforms in Maritime Law, war will be despoiled of its most vexatious prerogatives, while innocent neutrals are exempt from its torments. One step further is needed to complete this exemption. Commercial Blockade must be abandoned; for, while its first effects are naturally felt by the belligerent against whom directed, it soon acts with kindred hardship upon all neutrals, near or remote, whose customary commerce is interrupted, — so that the blockade of an American port may cause distress in Liverpool and Manchester, in Lyons and Marseilles, scarcely less than if these great cities were under pressure of

[1] Letter of the Secretary of State, May 6, 1794: American State Papers, Foreign Relations, Vol. I. p. 473. See also Letter of December 15, 1794: Ibid., p. 511.

a blockading squadron. Neutrals, it is said, must not relieve belligerents, and therefore blockade is effectively a two-edged sword, wounding belligerents on the one side and neutrals on the other side, — often, indeed, wounding neutrals as much as belligerents. If not designedly so, it becomes thus mischievous from the essential vice of its character. Blockade may be called the elephant of naval warfare, as destructive, often, to friends as to foes. So palpable is this becoming, that it is doubtful if neutrals will much longer allow such backhanded agency, smiting the innocent as well as the guilty, to continue under sanction of International Law. Its extinction is needed to complete the triumph of Neutral Rights.[1]

Such a change, just in proportion to its accomplishment, will be a blessing to mankind, inconceivable in grandeur. The statutes of the sea, thus refined and elevated, will be agents of peace instead of agents of war. Ships and cargoes will pass unchallenged from shore to shore, and those terrible belligerent rights under which the commerce of the world has so long suffered will cease from troubling. In this work our country began early. Hardly had we proclaimed our own independence, before we sought to secure a similar independence for the sea. Hardly had we made a constitution for our own government, before we sought to establish a constitution similar in spirit for the government of the sea. If not prevailing promptly, it was because we could not overcome the unyielding resistance of Great Britain. And now, behold, this champion of belligerent rights has "changed his hand and checked

[1] This paragraph was omitted in the delivery, lest it might be turned to disparage the blockade already instituted against Slavery.

his pride." Welcome to the new-found alliance! Welcome to the peaceful transfiguration! Meanwhile, through all present excitements, amidst all trials, beneath all threatening clouds, it only remains for us to uphold the perpetual policy of the Republic, and to stand fast on the ancient ways.

APPENDIX.

THE reception of this speech revealed the interest of the question, which was not inferior to that of Slavery. The auditory at its delivery, the expressions of the public press, the sensation in England, and letters from all quarters were as instructive as complimentary. Among our own countrymen at home and abroad the satisfaction was general. The people were against war with England, and they were glad to learn that by surrender of the Rebels Maritime Rights had obtained new safeguard, while the British pretext for war was removed.

The scene at the delivery was described by the leading journals.

The correspondent of the *New York Tribune* telegraphed briefly, but emphatically.

"Senator Sumner's speech was felt to be exhaustive of the Law of Nations which governed the case of the Trent, and is already ranked in Washington as a state paper upon the question of seizure and search worthy to be placed side by side with the despatches of Madison and Jefferson. It was delivered to a thronged and charmed Senate."

The correspondent of the *New York Herald* telegraphed more at length.

"The speech was impressively delivered. The galleries of the Senate were densely crowded. Notwithstanding the inclemency of the weather, the ladies' gallery was filled to overflowing. Mrs. Vice-President Hamlin and a party of her friends occupied seats in the diplomatic gallery, which was also filled. Secretaries Chase and Cameron occupied seats on the floor of the Chamber, where were also the French, Russian, Austrian, Prussian, Danish, and Swedish ministers. Lord Lyons was not present, as etiquette required that he should not be there on such an occasion. The speech was listened to with fixed attention by Senators Bright and Powell and ex-Senator Green. M. Mercier, the French minister, occupied a seat next to Mr. Bright, and exchanged salutations with Mr. Sumner at the conclusion of the speech, as did also most of the other foreign dignitaries.

"Mr. Sumner's speech has created a marked impression on the public in

regard to himself. It has removed much prejudice that existed against him, and added greatly to his reputation as a profound statesman. The impression prevailed, that, with all his learning, his extraordinary acquirements, and splendid talents, he could not avoid the introduction of his peculiar views in reference to Slavery; and on account of the strong Anti-slavery proclivities of England hitherto, and the sympathy heretofore from this cause existing between leading English politicians and our own Anti-slavery men of Mr. Sumner's class, it was apprehended by many that he would be inclined to lean towards Great Britain in this controversy. His course to-day was, therefore, an agreeable surprise. The absence of any allusion in his speech to the Negro Question demonstrated his ability and willingness to rise superior to the one idea attributed to him, and the scathing exposition of British inconsistency in regard to the right of search, and the dignified rebuke he administered to England, exhibited his capacity to regard public affairs with the eye of a genuine statesman.

"The applause accorded to this really great production is universal and unqualified."

The correspondent of the *New York Evening Post* gives the following sketch of the scene in a letter.

"In spite of the fog, rain, and mud of this morning, the galleries of the Senate Chamber began to fill at an early hour. In addition to the lounging *habitués* of the daily sessions, came a crowd which left them no room to lounge. You have only to advertise a speech, and how the life-tide sets towards the Capitol! Mr. Sumner's splendid oratory always attracts immense audiences, even when his speeches bear upon the unpopular subject of Slavery.

"Most people seemed to think that he was the slave of this one idea, and could only be great when mounted on his hobby. But in his master speech on the Trent affair and its relation to Maritime and International Law he has proved himself to be something more than the accomplished scholar, the eloquent speech-maker, forcing the recognition of his statesmanship from the very mouths of his enemies. This exposition of the triumph of American principles, necessarily less ornate than his more literary productions, is marked by all his usual fastidious strength of style. Vibrating through his voice, every word seemed a live nerve quivering with electric meaning.

"A speech so kind and calm in rebuke, so elaborate in research, so bountiful in proof, so conclusive in argument, coming from the Chairman of the Committee on Foreign Relations, and an acknowledged favorite of England, will appeal with strong conviction to her people. Here in Washington its praise is on every tongue. In the dense crowd of the gallery General Fremont was conspicuous, and among the Abolitionists of the audience were the Rev. John Pierpont and Rev. Dr. Channing of the new Antislavery church. The French, Danish, Prussian, Austrian, Russian, and Spanish ministers, with Secretaries Chase and Cameron, sat in groups in the Senate Chamber,

amid the eagerly listening Senators. The last is a special item; for I observe, as an every-day habit, that these distinguished gentlemen do not pay very marked attention to each other's speeches. In the crimson diplomatic gallery sat the daughter and wife of Vice-President Hamlin."

The editorial judgments were in harmony with the reports of correspondents.

The *National Intelligencer*, at Washington, which had not inclined to Mr. Sumner on Slavery, said : —

"We give to-day, in consideration of the current interest attaching to its subject, and, we may add, because of its great ability, the speech delivered yesterday by Mr. Sumner in the Senate of the United States on the question of International Law raised by the arrest of Messrs. Mason and Slidell.

"Singularly qualified for this discussion by his erudition as a jurist and as a student of history, besides being called by his position as Chairman of the Committee on Foreign Relations in the Senate to give to the subject that mature consideration it deserves, Mr. Sumner has brought to its treatment an affluence of illustration and authority, derived from the most cherished traditions of American diplomacy, for the purpose of showing that the decision to which our Government has come in the premises may be rested on a broader foundation than that which was sufficient to cover the ground of the British reclamation against the act of Captain Wilkes."

L' Eco d' Italia an Italian paper in New York, took this occasion to pay a warm tribute to Mr. Sumner, and his moderation of conduct.

"Nobody had better right to speak with knowledge and authority than the Chairman of the Committee of Foreign Relations, and as a man rather extreme in his ideas of personal independence."

Then complimenting him on his knowledge of French and Italian, his admiration of Italian literature, and his ardent love of Italy, this journal says : —

"Sumner, from the beginning of his political career, showed himself the decided enemy of Slavery, and was marked by the opposite party as an Abolitionist, which was equivalent to subverter of public order, robber, and worse. In the midst of the greatest difficulties he kept himself constant always. . . . . Now that the movement has commenced, Sumner, instead of throwing wood on the fire, which already burns too much, shows all the prudence and sagacity of a true statesman."

The *World*, in New York, said : —

"The carefully prepared speech which Mr. Sumner delivered in the Senate yesterday is an important contribution to the stock of current information on an important question of public law. The arrest of Mason and Slidell has not before been discussed with so much breadth of research. Mr.

Sumner's luminous speech is a remarkable example of the advantage of historical knowledge in the discussion of public questions. . . . .

"It is creditable to Mr. Sumner that he has been able to present so conclusive an historical argument in opposition to the view of this subject taken by legists and publicists so able and erudite as Mr. Everett, Mr. Cushing, Professor Parsons, and Chief-Justice Bigelow, of his own State, and most of the public journals in all parts of the country. The error of these writers has consisted in an undue deference to the British admiralty decisions, — decisions against whose validity on the points involved in this controversy our Government has always protested.

"Mr. Sumner's argument plainly sustains Mr. Seward in his surrender of the Rebel commissioners, but not in his delaying to do so till they were demanded by the English Government. The thanks of the country are due to Mr. Sumner for his convincing argument that the national honor has suffered no detriment by their surrender."

The *New York Commercial Advertiser* said: —

"Mr. Sumner gives, within limits as brief as the nature of the case would permit, the arguments which influenced the Committee after a laborious investigation of the point in dispute. He performs this duty in a temperate, lucid, and convincing manner, rising above all asperity or excitement, and viewing the question as it affects the best interests of the human race. At the same time he has steered almost entirely clear of the track marked out by Secretary Seward, the great body of his argument being drawn from events and precedents in the history of our own country. . . . . We take the greater pleasure in referring to the elaborate arguments brought forward by Senator Sumner, inasmuch as certain parties seem to think that Secretary Seward's able reply to Lord Lyons on this subject was nothing but a graceful backing down before superior force, — that he strove to hunt up precedents on behalf of a position which was in fact defensible only because our Government could not accept the gauntlet thrown down by that of Great Britain. No unprejudiced person, we think, can peruse Mr. Sumner's speech without arriving at a different conclusion. It should rather be an occasion for national congratulation than humiliation, that Great Britain has, *de facto*, abandoned her old ground, and planted herself on doctrines and practice strictly, and for a time almost exclusively, American."

The *Burlington Daily Times*, of Vermont, said: —

"We have not room to print the elaborate and convincing argument of Senator Sumner on the seizure of the Rebel emissaries, Mason and Slidell. Notwithstanding all that has been said, it is fresh and original, and is a complete vindication of the course of the Administration in promptly restoring the seized persons to the British Government. It cannot remove the animosities which the course of England has kindled among Americans; but it cannot fail to heal the galled sense of wounded national honor, because it is shown by the argument that it has not been wounded at all, —

that the feeling of shame and dishonor which has been experienced has been resting on imaginary and false grounds."

The *Boston Transcript* said: —

"Fortunately for Mr. Sumner, events have arisen which have enabled him to demonstrate that he is not ridden by one idea. As Chairman of the Committee on Foreign Affairs, the most important post that a Senator of the United States can hold in the present emergency of the nation, he has shown talents and acquirements which every fair mind cannot but appreciate. The 'inevitable negro' is banished from this arena, and the country has been astonished by the solidity of Mr. Sumner's learning, the amplitude of his understanding, and the sagacity of his judgment on all the vital questions which have arisen in his special department. His speech on the affair of the Trent is a masterpiece. He goes beyond all the precedents of the conservative lawyers of New England, and all the arguments of the Secretary of State, to the essential principles of International Law, as recognized by the great thinkers and statesmen of the Continent of Europe, and as contended for by our own Government. He, the man who has most cause to hate Slidell and Mason, and who, from his Abolitionist proclivities, would be most opposed to delivering them up, is found to exceed even Mr. Seward in his desire to establish the rights of neutrals and ignore the passions of the hour."

The *Norfolk County Journal* said: —

"It is a work of supererogation to say one word in its praise. Public opinion has already stamped it as one of the great speeches of the present generation of American statesmen. In the acquaintance which it displays with International Law, the impregnability of its argument, the classic finish of its diction, and the statesmanlike temper which it brings to the discussion, it has gained for its author new honors, and done much to counteract a prejudice against our Senator which too many had mistakenly allowed to possess their minds."

The *Haverhill Publisher* said: —

"The late speech of the Senator on the Trent affair is one of the ablest state papers that have appeared in this country for years, and will have a powerful influence upon the English mind in settling the present disturbed state of feeling, and also in securing the practical acknowledgment of a great principle in International Law. Those who have found the most fault of late with Mr. Sumner for his efforts to keep fresh before the country the cause of our present disaster, as an important thing to be considered, while struggling for relief, are now among the first to do him honor for his unanswerable argument upon the Trent Question, and the principle involved. In the end, the country and the world will as fully agree with him, practically, upon the question of Slavery. No man can more truly be said to be the man for the hour than can Senator Sumner."

The *Salem Gazette* said :—

"It is a pleasure to accord to Senator Sumner the approval of his most judicious course on the same subject. We take the more pleasure in this approval, because it has often been our fortune to differ with Mr. Sumner in regard to the treatment of some of the most important questions before the country. But in regard to our foreign relations, holding as he does the responsible position of Chairman of the Senate Committee on that subject, we confide in him as a safe, wise, and thoroughly well-informed guide."

These are illustrations of the American press. Very different was that of London, so far as it spoke. One of our countrymen, then abroad, and closely observing the manifestations of opinion, remarked that the speech was attacked, but not reprinted.

"The excellence of any such effort is to be measured now in this country only by the amount of attack it calls out, and I was therefore much pleased to see that the *Times* lost its temper in criticizing you. It is a significant fact, that neither it nor any of its allies have ventured to reprint the speech. They confine themselves to a style of criticism that I should call blackguard, against you, Mr. Seward, and Mr. Everett."

In contrast with the prevailing tone was the London Peace Society, which, in its Annual Report, spoke of the speech.

"They felt it right to reprint the very able speech delivered by Mr. Charles Sumner on the affair of the Trent, because, while explicitly surrendering every right on the part of the American Government, as respects that transaction, he does so on such broad principles as in the judgment of the Committee it would be greatly to the advantage of all civilized states to adopt and act upon in their relations with each other. Copies of this pamphlet were sent to all Members of Parliament, and to a large number of newspapers and periodicals throughout the kingdom."[1]

The character of the attack by the *Times* will be seen by a few passages from a leader, January 25, 1862.

"The last mail has brought us another attempt, made in a speech five columns long by Mr. Charles Sumner in the American Senate. This gentleman is, perhaps, the one American who has been most petted and fêted over here. Mr. Charles Sumner was the greatest drawing-room lion of his day, and his mane was combed by a thousand delicate hands, often held up in admiration at his gentle roarings. In America he has arrived at the high distinction of Senator for Massachusetts and Chairman of the Committee for Foreign Affairs; but after the very general hilarity throughout Europe caused by Mr. Seward's diplomatic *fiasco*, it seems to have been thought necessary to put some one forward to make 'a scathing exposition of British inconsistency,' and to show what a victory over the old country had been obtained. So Charles Sumner is the man. . . . . Mr. Sumner has not done

[1] Herald of Peace, August, 1862.

his work ill. But then he had peculiar facilities for it. 'Who best has known them can abuse them best.' Moreover, his audience at Washington was not difficult. Gentlemen who could congratulate themselves on Bull Run required no cogent reasons for seeing a glorious triumph, first in the seizure of the Trent, and then in the compulsory surrender of the prize. . . . . No wonder, then, that Mr. Charles Sumner's speech in the Senate has been a great success. We are told that all the foreign ambassadors — except only Lord Lyons, whom nothing but severe diplomatic etiquette kept away — came round him and congratulated him; and that after its delivery, 'our respected mother, England,' is 'left out in the cold,' — whatever that may mean. The two points which seem especially to have been admired are, first, 'the absence of any allusion in his speech to the Negro Question,' — showing that he is by no means so obstinate upon that matter as had been feared, — and, second, 'the signal rebuke he administered to England.' We can go some way with Mr. Sumner's encomiasts in this admiration. It at least shows a versatile and cosmopolitan mind. His 'allusions to the Negro Question' are evidently only absent from his Washington speeches because they are kept entirely for English use, and are not fitted for home consumption; whereas the 'rebukes' are manufactured expressly for the American market, and are never offered for acceptance on this side of the Atlantic. . . . . It is of no great consequence to us what clouds of dust American statesmen may choose to raise in order to escape from their difficulty. Now that they have eaten the leek, they may declare, if they please, that it was exquisite in its flavor, and had been presented to them as a mark of honor. . . . .

"The case of the Trent has not made any new precedent whatever, nor can it clash with any precedent upon which in modern times we ever did or could have intended to rely. The forcible removal of those four men from under the British flag was a rude outrage, redeemed neither by precedent nor principle, and it has been resented and repaired. If all the Federal Senate make set speeches till doomsday, they can make no more of it."

In the course of its objurgations, the *Times* seeks to repel the parallel between the taking by Captain Wilkes and the taking of American citizens by British cruisers, and here it asserts :—

'In the current number of the *Quarterly Review* it is conclusively shown that only two men 'claiming to be Americans' were taken by our cruisers out of American ships in the year preceding the war of 1812."[1]

"Only two men 'claiming to be Americans'"! Lord Castlereagh, in the House of Commons, immediately after the breaking out of the war, admitted that there were in the British fleet three thousand five hundred men "who claimed to be American subjects."[2] The *Times* per-

[1] Quarterly Review, January, 1862, p. 260.

[2] Debate on the Address respecting the War with America, Feb. 18, 1813: Hansard, XXIV. 601.

haps intended "only two men" really American. But here is strange and total oblivion of the fact, that, in every case of taking, whether the victim was American or not, whether two or two hundred were seized, there was an exercise of the very prerogative it condemned in Captain Wilkes, although he had an excuse beyond that of any British cruiser.

This leader of the *Times* was followed by an article, dated at the Temple, January 28, from its famous correspondent "Historicus," known to be Mr. Vernon Harcourt, a writer of admirable power on questions of International Law, and afterwards a distinguished member of Parliament. In this article the same spirit appeared, with the same personality, and the same hardihood of assertion. Beginning with elaborate flings at Mr. George Sumner, where the causticity is reinforced from *Martin Chuzzlewit*, he comes to the Senator, and, in the tone already adopted by the *Times*, refers to his reception in London: "It would be scarcely too much to say, that, for a single season, Mr. Charles Sumner enjoyed a social success almost equal to that of the 'Black Sam' himself. He was regarded as 'a man and a brother,' and he could not have been better treated, if he had had real black blood in his veins." This is to prepare for what follows.

"It is impossible adequately to describe the 'great speech' in the Senate, except by saying that Charles, if possible, out-Sumners George. The great object of this remarkable oration is to prove that the surrender of Messrs. Slidell and Mason is a great triumph for the American Government. There is, proverbially, no accounting for taste; and if the American people are of Mr. Sumner's opinion, I do not see why we should complain of their contentment. Some people, like Uriah Heep, are 'very 'umble,' and their meekness is an edifying spectacle. We demanded the restoration of the prisoners, not in order to mortify the American people, but for the purpose of vindicating the honor of our flag and asserting the established principles of Maritime Law."

In exposing Mr. Sumner's misfeasance, the writer proceeds: —

"As if to make the absurdity of his position more conspicuous, Mr. Sumner invokes the sympathies of 'Continental Governments' for the doctrine of Mr. Seward's despatch. He has even the incredible audacity (if it be not, indeed, an ignorance hardly less credible) to pledge the authority of M. Hautefeuille in support of the pretension to treat Messrs. Slidell and Mason as 'contraband of war.'"

This is followed by an extract from M. Hautefeuille, declaring that a neutral ship, destined for a neutral port, is not subject to seizure.

This passage shows that the writer had in mind something very different from the speech he criticized. Mr. Sumner nowhere alludes to Mr. Seward's despatch, much less does he invoke the sympathies of

Continental Europe for its doctrines. Nor does he pledge the authority of M. Hautefeuille in support of the pretension to treat the Rebel agents as contraband of war; on the contrary, he mentioned M. Hautefeuille as having "entered into this debate with a direct proposition for the release of the emissaries as a testimony to the true interpretation of International Law,"[1] and himself insists upon the very doctrine of the French publicist. Plainly, therefore, the writer dealt hard words at Mr. Sumner, mistaking him for somebody else.

Then comes another misapprehension.

"I know not whether, in the hazy muddle of a confused intelligence, Mr. Sumner has figured to himself that the seizure of Messrs. Slidell and Mason is a parallel case to the instances of impressment of seamen out of which grew the war of 1812. Yet men of less pretensions than the 'Chairman of the Committee of Foreign Relations' ought to be aware that the cases are not only not the same, but not even similar. Their resemblance, at most, extends to the proverbial identity of chalk and cheese."

Evidently the writer had not read the opinion of the law officers, individualizing the point, that "from on board a merchant ship of a neutral power, pursuing a lawful and innocent voyage, certain individuals have been taken by force,"[2] which was the precise point so often urged by the United States against impressment.

Then follow the general condemnation and counterblast.

"It is impossible to read such performances as the 'Great Speech of the Hon. C. Sumner' without drawing a gloomy augury for the future of a nation among whom such a man can occupy a chief place. In all the symptoms of decadence which the recent history of the American Republic exhibits, there is none more conspicuous and apparently more irreparable than the decline in capacity and character of her public men. The men bred under the shadow of the English colonial system were of a very different stamp from the race which progressive Democracy has spawned for itself. . . . .

"But now, whether we turn to the puerile absurdities of President Lincoln's message, or to the confused and transparent sophistry of Mr. Seward's despatch, or to the feeble and illogical malice of Mr. Sumner's oration, we see nothing on every side but a melancholy spectacle of impotent violence and furious incapacity."

In the volume of Historicus,[3] much of which constitutes a valuable contribution to International Law, this effusion is abridged and modified.

[1] *Ante*, p 213.

[2] *Ante*, p. 164

[3] Letters by Historicus on some Questions of International Law, reprinted from the *Times* with considerable Additions. London and Cambridge, 1863.

Some things are left out, and others are changed. Generally the personalities are mitigated. Thus, the original caption, "The Brothers Sumner on International Law," is turned into "Letter on Mr. Sumner's Speech," and "the hazy muddle of a confused intelligence" is softened into "a confusion of mind" attributed to Mr. Sumner; but the article is introduced by words describing the speech as "*professing* to expound and to maintain the doctrines of Mr. Seward's despatch," and it repeats the allegation that "Mr. Sumner invokes the sympathies of 'Continental Governments' for the doctrine of Mr. Seward's despatch," whereas, in fact, he never professed or did any such thing. It would be pleasant to forget that an article of such a character was ever written; nor would it be mentioned here, if it did not throw important light — and not to be neglected — on the general tone of the British press and its unfounded conduct towards our Republic at a critical moment.

Contemporary letters from countrymen abroad tell how they were impressed.

At home, persons in all conditions — statesmen, judges, lawyers, clergymen, authors, citizens — made haste to express gratification and sympathy. This copious correspondence evinces the intensity and extent of the prevailing sentiment, which can be learned in no other way. Thus it illustrates an important chapter of history.

A letter from Hon. Richard H. Dana, Jr., District Attorney of the United States at Boston, and afterwards the annotator of Wheaton's "Elements of International Law," an able publicist, full of good feeling for England, though written at Boston, may be introduced here, as it bears especially upon the conduct of England and the English press.

"Permit me to say that I am glad to see the London *Times*' attack on you and your Trent speech. It will make you feel to the quick — what you did not seem to feel, or refused to admit — the *insolent* tone of the British press and public men towards us in our struggle for life, and the false manner in which they have tried to turn this case to our national ruin. Those few semi-republican, semi-abolition, liberally inclined men in England, whom you respect, and who command, perhaps, one paper and one monthly, are a drop in the bucket. The ruling class in England is determined to sever this Republic, and all its pent-up jealousy, arogance, and supercilliousness are breaking out stronger and stronger.

"There is not one English paper that I have seen which has not either suppressed or falsified the material facts of this case, because they know, that, properly understood, they would not support the hostile feeling against this country the papers depended upon keeping up. I am rejoiced to know that you feel this.

"I have had a letter from England, from a high source, which speaks of

your speech as very able, etc., etc., but says, "No paper has dared to publish it," and speaks of their attacking without publishing it, thus making it apparent that it is read.

"One of my letters says, 'It is an excellent speech, but it has cost him his favor in England.'

"I write these things to you because I take pleasure in them. They are *the best omen for you* that I have seen."

Hon. George R. Russell, an excellent citizen of Boston, travelling in Europe, wrote from Florence: —

"The *Times* has come down on you, and has failed. It has the usual bitterness, but the power is wanting."

Hon. James E. Harvey, Minister Resident at Lisbon, wrote: —

"I have just read your speech on the Trent affair, and cannot refrain from expressing my thanks for its able and conclusive vindication of the position of our Government on that subject. If any reasoning can reconcile the American mind to the restitution of the two emissaries to British protection, your arguments and the calm and convincing presentation of facts must do it. What you have said of Hautefeuille might be justly applied to this statesmanlike production, which, in comprehension and in logical connection, is a state paper."

Hon. Bradford R. Wood, Minister Resident at Copenhagen, wrote: —

"I thank you for your speech on Maritime Rights, just received, and which I have carefully read. All my assertions that the Trent affair would not lead to war were received here with incredulity, by the Government, by my colleagues, by all parties. It was a bitter disappointment to some of the English here, and I doubt not in England, that this matter has been settled without war. The London *Times*, while criticizing your speech and denying its conclusions, writhes under it, and its arguments are a severer rebuke to England than any philippics or denunciations could be."

William S. Thayer, Consul-General at Alexandria, wrote from his post: —

"I lent Mr. Buckle[1] the *Intelligencer* with your speech on the Trent affair, some points of which received his emphatic indorsement."

Hon. John Bigelow, Consul at Paris, and afterwards Minister there, wrote from Paris: —

"It produced an excellent effect here, and still better in England, if one may judge by the ill-humor in which it put the *Times*. The impotent venom of that journal, under the circumstances, was more complimentary than its praise could have been."

[1] This was a very short time before the sudden death of this lamented author.

Henry Woods, the Parisian member of the American importing house of Messrs. C. F. Hovey & Co., wrote from Paris : —

"I have to thank you for a copy of your very able speech on the Trent affair, which has been very much read, and in all quarters I hear it spoken of with admiration. It is considered your greatest effort, and worthy of a great occasion."

Professor Charles D. Cleveland, author and Abolitionist, Consul at Cardiff, Wales, wrote : —

"How my heart rejoices that the affair of the Trent is thus amicably settled! but — and I *must* say so — I have little faith in the good feeling of the Government of England, and the leading influences here, towards our country. How indignant have I felt the last six weeks at the tone of the leading papers towards our country! Nothing, hardly, could exceed the bitterness of the *Times*, the *Post*, the *Telegraph*, the *Saturday Review*, &c., &c. Even *Punch* lent all his influence to the Rebels, and against us. The very first number after the news of the Trent affair was received had a full-length figure of Britannia standing beside a cannon, with a match in her hand, looking across the water, and underneath was written, 'Waiting for an Answer.'

"True, the religious public, or rather the Dissenters, have shown right feelings; and I wrote letters of thanks to Dr. Newman Hall and to Mr. Spurgeon for what they had done, and received very kind answers; but very few of the Church Establishment have shown right feelings.

"I was always the friend of England, and few have written or spoken more in commendation of her; but I must in truth say that my feelings have changed since I have been here. England would rejoice to-day to see our country divided. She sees our growing greatness, and envies and fears it."

In close connection with letters from abroad is that of E. Littell, founder and editor of the *Living Age*, close student of the English press, and warmly attached to England, who wrote from Boston : —

"Allow me to congratulate you upon the speech on the Trent affair. 'They of the contrary part,' even, 'cannot gainsay it.'

"After feeling so deeply the almost unbroken attitude of the London press as to be forced to think and say that I must give up my love for England (which was a part of my inmost heart), I have reverted to her again, pleading that that press does not represent either her people or her Government."

Hon. Henry L. Dawes, the eminent Representative in Congress, wrote : —

"I congratulate you on your great effort to-day. It was worthy of you. I regret I could not hear it all. But I shall have the greater pleasure in reading it."

Hon. Hamilton Fish, afterwards Secretary of State, wrote from New York : —

"*Exactly* right; you have done justice to the question, the country, its history, its policy, and its late action. On such ground as you have placed the subject we stand proudly before the world. . . . .

"It should be circulated largely in England, among the class who will read it. The British press will not publish it in full, unless you can bring, through some of your friends, an influence to bear. Cannot you do so?"

Hon. N. P. Talmadge, former Senator of the United States from New York, wrote from Georgetown, District of Columbia:—

"I have just read with great pleasure your very able speech in regard to Messrs. Mason and Slidell and the recent affair of the Trent. Coming in support of the lucid and able reply of Mr. Seward to Lord Lyons, it places the matter before the American people and all Europe in a light as clear as a sunbeam.

"It seems to me that England, in the excitement of the moment, and with the sudden impulse of redressing a fancied wrong, has not foreseen the inevitable result to which her own action has brought her. She may attempt hereafter, as occasion may require, to evade the consequences by saying that the law officers of the crown decided that the wrong consisted in not taking the Trent into port for the adjudication of a Prize Court, and therefore that was the only point involved. She will find, however, that not only the United States, but France, and all Europe, will hold her to the consequences which you have so clearly demonstrated flow from her own action.

"Mr. Seward's reply to Lord Lyons, and your speech, will settle this whole question with the American people. If their judgments are satisfied, they cheerfully acquiesce, no matter how high their passions may have been wrought against these Rebels, nor how strong their desire to keep possession of them. I believe there is not a loyal press that has not acquiesced in the decision of the Administration. How proudly all this contrasts with the predictions of Dr. Russell, the correspondent of the London *Times*, that, if these men were given up, the Government would be dissolved and destroyed by the mob! This will show England that a British ministry have much more to fear from her mobs than the Administration of this Government have to fear from our people."

Hon. Julius Rockwell, the Judge, and former Senator of the United States, with lifelong experience, political and judicial, wrote from Pittsfield, Massachusetts:—

"The public opinion, as far as I know it here, is in accordance with the positions set forth in your speech, and your speech will tend to illustrate and render it more general. Still, some are unsatisfied, and there is a general, I may say, almost universal, accession of dissatisfaction with the conduct and character of England. This feeling just now pervades our people, crops out in all lectures, and in many sermons, and some prayers."

Hon. Daniel Ullmann, prominent in the politics of New York, and a General in the war, wrote from his head-quarters:—

"You will greatly oblige me by sending to my address a pamphlet copy of your great speech on the 'Trent affair.' I desire it in that form for preservation."

Hon. James Duane Doty, Governor of Utah, and former Representative in Congress, wrote from Salt Lake City : —

"Far, far from you, on the top of the Rocky Mountains, I have just held communion with you by a perusal of your able, eloquent, and conclusive speech on the Trent affair, as reported in the *Herald* of the 10th January, which has just reached us. Surely no nation was ever put in a more absurd position than you have placed England, and if she is satisfied with the possession of the Rebels (whom, I am glad to notice, you have not named), we ought to be gratified; for it avoids a quarrel at an inconvenient time, and allays public feeling, which was becoming much excited. These two worthless Rebels could not have been put to a better use."

Hon. Wayne MacVeagh, afterwards Minister at Constantinople, wrote from West Chester, Pennsylvania : —

"I cannot refrain from expressing to you the personal obligation I feel for your last great speech. Its wise candor and its steadfast adherence to the landmarks of maritime freedom cannot fail to make a profound impression upon the liberal minds of Europe; while disclaiming the thought of her dishonor, you have lifted the Republic to the heights of a beneficent victory."

Hon. B. C. Clark, merchant, and Consul for Hayti, wrote from Boston : —

"Your speech on the Mason and Slidell matter has won, most justly, golden opinions from all sorts of people. The affair has been put to rest, but simply on legal grounds. . . . . The Trent will tell more terribly upon England than the ghost of Cæsar upon Brutus at Philippi."

Hon. George T. Bigelow, Chief Justice of Massachusetts, wrote from Boston : —

"I have read your speech on the Trent affair with very great pleasure. It is an admirable exposition of the doctrine which England has so long held on the subject of neutral rights; and while it demonstrates that the act of Captain Wilkes might have been justified on English practice and precedents, it places in the most clear light that it was inconsistent with the position which our Government has always occupied on the subject of search and seizure. The tone of the speech is so quiet and dignified, that it will have the effect, I think, of a severe rebuke on the hasty and unjustifiable conduct of the English Cabinet in demanding a reparation and a surrender of the captives with warlike menaces and preparations.

"The prevailing sentiment here, especially among those who have not heretofore been inclined to speak your praise, is one of commendation of your speech. I am rejoiced that you have been able, while vindicating the

course of the Administration in making the surrender of Mason and Slidell, to add so much to your reputation as a statesman."

Hon. Theophilus Parsons, the eminent law-writer and law-professor, wrote from Cambridge : —

"I have read and studied your speech, and am really unwilling to repeat to you what I have said in commendation of it to others.

"This question may be considered after the fashion of a lawyer, or a politician, or a statesman.

"You have viewed it as a statesman, and, in my understanding of the word, that includes the other two, and elevates them both.

"The affair has given rise to no paper so entirely satisfactory to me, nor to one calculated, in my judgment, to be so truly and permanently useful."

Hon. Emory Washburn, Professor at the Law School, and former Governor of Massachusetts, wrote : —

"I cannot forbear expressing my satisfaction in reading your speech in the Senate on the Trent affair. It seems to me to place the matter on the true ground; and if the English Government do not find, when they come to look coolly at the matter, that in taking Mason and Slidell they have caught two Tartars, I shall be greatly mistaken. I think, moreover, you have spoken the sober, sound thought of the country; and while they are indignant at the inconsistent annoyance of the ministry and the press of England, they feel that the course taken is not only the wise and expedient one, but, on the whole, the most consistent."

Hon. John H. Clifford, former Attorney-General of Massachusetts, and Governor, wrote from Boston : —

"I have read with unqualified approval and satisfaction your admirable exposition of the interesting questions of public law in your recent speech, growing out of the arrest and rendition of the 'two old men' taken from the Trent. I trust its treatment of the doctrine of Maritime Rights will command on the other side of the water the respect to which it is so justly entitled, and of which its reception by the best minds at home gives a hopeful assurance."

Hon. John C. Gray, a venerable and accomplished citizen, wrote from Boston : —

"I return you my acknowledgments for your speech on the Mason and Slidell affair. The more I have examined the law, — and I regret that I did not do it earlier, — the more I am satisfied that our civilians here were mistaken in their first impressions."

Hon. George S. Hale, lawyer, wrote from Boston : —

"Permit me to congratulate you on your late speech in the Senate. I am

not unfamiliar with your speeches, and feel great pleasure in saying that none has ever, in my opinion, so strengthened your position as a statesman; none has been more happy, more effective, or more generally satisfactory to your constituents.

"Without calling up any of those questions upon which many of them have differed from you, you have done much to contribute to public peace, and aided well, under peculiarly difficult circumstances, in placing the country in an honorable position before the world."

Hon. Charles P. Huntington, late Judge of the Superior Court for Suffolk County, wrote: —

"I have read your speech on the Trent affair with more satisfaction than anything that has yet been uttered on the subject, and as placing the merits of the question on the most satisfactory and statesmanlike ground."

Rev. Theodore D. Woolsey, the excellent President of Yale College, and author of a work on International Law, wrote from New Haven: —

"Having just read with great pleasure your speech on the Trent case, as given in the *Tribune* of yesterday, I feel moved to express to you my satisfaction that you have given the affair such a shape, and have tacitly exposed some of Mr. Seward's errors."

Hon. John Jay, afterwards Minister at Vienna, wrote from New York: —

"Accept my congratulations on your very able speech on the Trent matter. It will rather surprise your friends in England."

Hon. John M. Read, a Judge of the Supreme Court of Pennsylvania, wrote from Philadelphia: —

"I was very much gratified in reading your very able, temperate, and forcible speech on the Trent affair."

Then, in a second letter, the same judicial authority wrote: —

"It is the very best discussion of the whole subject that I have seen."

Hon. Francis Brockholst Cutting, former Representative in Congress from New York, and a leader of the bar, wrote from New York: —

"Your speech on Maritime Rights has given me very great satisfaction. It was worthy of your reputation, and equal to the occasion. The argument was particularly gratifying to me, because, from the outset, I had looked at the case from the American point of view, and had expressed myself accordingly."

Hon. R. J. Meigs, of Tennessee, for a long time eminent at the bar and in juridical study, wrote from New York: —

"One word more. I thank you for your speech upon the Trent affair. It vindicates the honor of our baited and abused country. It will be a well-remembered document in the diplomacy of the world, settling as it does forever the immunity of neutrals from the insulting pretension of the right to seize persons on their ships merely upon the ground that they owe allegiance to the belligerent. It effectually extracts that poisonous fang from the jaws of Leviathan."

Hon. David Roberts, lawyer, and author of a "Treatise on Admiralty and Prize," wrote from Salem : —

"I deem it your best effort, settling, what to me was from the first *the* embarrassing element in the Wilkes question, *a true American* definition of 'despatches.'

"I therefore thank you for the speech sincerely; and though differing *toto cœlo* from you politically in other respects, I shall not withhold my commendation from your present effort, deeming it, as I do, the paramount duty of all to inculcate the lesson of loyalty everywhere, until this Government is vindicated, and the existing Rebellion suppressed."

Hon. George Wheatland, lawyer, wrote from Salem : —

"Allow me, for the first time of ever addressing you, to thank you for your masterly statement of the Trent matter, which I have just risen from reading in the *Boston Journal*.

"You have put the matter in its true light. . . . .

"Your speech will shed light, and, in fact, illuminate the whole subject, and should be read by every one. By taking Mason & Co. we were acting on the English law; by giving them up, we act under our own view of what the law should be, and have brought England over to adopting our view."

Hon. Asahel Huntington, the veteran lawyer, wrote from Salem : —

"I am always greatly obliged by your speeches, which you have had the kindness to send me from time to time. They are all gems of the first water, but the 'Trent' is the greatest gem of all, — so calm, so full, so exhaustive, so statesmanlike, so Websterian in its statements, structure, and heavy logic, that, on first reading it, before receiving the pamphlet, I had it in my heart to write you at once and express my high admiration of that great passage in your public life. It was a great opportunity, and was met in the true spirit of a controversy between nations on questions of International Law. It was potential for good at home and abroad, and is worthy itself to be trusted as an authority from its own intrinsic weight."

Hon. George Morey, lawyer, and for a long time a political leader in Massachusetts, wrote from Boston : —

"I congratulate you on your having delivered an excellent speech touching our foreign relations, and particularly the case of the Trent.

"Your speech comes exceedingly apropos, following in the track of Mr. Seward's despatch. As that despatch will be looked upon in England with some suspicion, as proceeding from an artful and wily statesman, and there may be a disposition to regard it as a cunning *dodge*, &c., it is very fortunate that your speech will follow in the wake of Mr. Seward's letter. A very great number of distinguished men in England, statesmen, diplomatists, &c., will say, Mr. Sumner is honest, he speaks his real sentiments. Besides, it will be said that Mr. Sumner is a most decided Antislavery man, and he is heartily engaged in putting down this great Rebellion, not because he desires to fight for *empire*, as Earl Russell stated in a speech some time since our Government were, but because he is anxious to extinguish Slavery, and because he knows that Slavery is the origin of this war. I am satisfied your speech will have an excellent effect in England, and also in France, and all over the Continent. You have done a capital thing towards conciliating the favor and good-will of our State Street gentlemen. Mr. Cartwright, President of the Manufacturers' Insurance Office, where I am a director, says you have done excellent service to the country and the good cause. He has a pretty large amount of war risks. Your short speech in answer to Mr. Hale was commended very highly everywhere."

Hon. Theophilus P. Chandler, lawyer, wrote from Boston :—

"Your Trent speech is by far the best thing I have read on the subject. You look *down* upon the matter, while others look *at* it. . . . . The tables are completely turned upon England. If there is any shame in her, she will show it now."

Hon. E. F. Stone, lawyer, wrote from Newburyport : —

"As one of your constituents, I write to thank you for your speech on the surrender of Mason and Slidell. I have read and re-read it with great satisfaction. It is just the thing to create a correct public opinion upon the subject in the country."

Hon. Alfred B. Ely, lawyer, and officer in the War of the Rebellion, wrote from Boston : —

"I have just read your speech on the Trent affair with great pleasure. I deem it entirely unanswerable, and that it ought to conclude the whole subject. I desire, therefore, to congratulate you upon it."

William I. Bowditch, conveyancer and Abolitionist, wrote from Boston : —

"I read your speech on the Mason and Slidell matter yesterday. It certainly is very admirable and conclusive. Still, I think it doubtful whether England will consider that she has really abandoned any of her previous pretensions by demanding and accepting the men."

Hon. Edward L. Pierce, lawyer, writer, and speaker, correct in opinion, and able, wrote from Boston : —

"I read your speech. It is grand, — dealing just right with the British, and putting us on the highest grounds. It will help the country."

Rev. Baron Stow, the Baptist clergyman, wrote from Boston : —

"My opinion of its merits may be of small importance to you, but I cannot forbear to assure you that it has the approbation and admiration of one of your constituents. I cannot be supposed to be much versed in International Law, but I understand your argument, and am sure that every one who reads must understand. I see not how you could have made it more clear or cogent. You condense the history of a vexed question into a crystalline lens, and every eye must see your point. I greatly mistake, if your views do not produce conviction both at home and abroad. You have performed a service to the true and the right which will surely be appreciated and acknowledged."

Rev. Caleb Stetson, the Liberal preacher, wrote from Lexington, Massachusetts : —

"I must for a moment break in upon your vast public labors to thank you for your admirable speech on the affair of those two wretches, Mason and Slidell. You have said the best things that could be said, in the best manner. I greatly rejoice that the traitor villains are given up, for we cannot afford a war with England when we have this diabolical Rebellion. I am glad of your forbearance towards her, but I fear this generation will not forgive."

Rev. William H. Furness, the eloquent and Radical preacher, wrote from Philadelphia : —

"Lend me your own gift, that I may tell you in fitting words how admirable your speech is. It is cheering to see how it has convinced people that all is right in regard to the Mason and Slidell affair. With all its shortcomings and shilly-shallying, what a glorious nation this North is!"

James Russell Lowell, eminent in our literature, wrote from Cambridge : —

"Let one of your constituents thank you for your speech on Maritime Rights. Excellent, as far as my judgment goes, in matter and manner."

Charles E. Norton, the accomplished author, and for a time editor of the *North American Review*, wrote from Cambridge : —

"I read your speech last night with such great satisfaction, that I desire to express my thanks to you for it. The argument could not be more forcibly presented, or in a manner better fitted to enlighten and confirm the sense of national dignity here, and to give the right direction to public opinion abroad. You have done a work of the highest value."

Orestes A. Brownson, the able writer and reviewer, wrote from Elizabeth, New Jersey : —

"I have been absent from home, and have read only the one on the Trent affair, which I think does you equal credit as a lawyer and a statesman. The view you take is the one which I myself took, when I first heard of the capture of Mason and Slidell, but I knew not that it could be backed by so many and such high authorities as you have cited."

Hon. Amasa Walker, Professor of Political Economy, and afterwards Representative in Congress, wrote from North Brookfield, Massachusetts : —

"I am much obliged for your speech on Maritime Rights. It is your grandest effort. A noble theme, and treated in an able and most statesmanlike manner. You have never made a speech that did your country more good or yourself more credit. I am particularly glad that it draws forth encomiums from presses in this State that have been very hostile to you. They seem compelled to admit their admiration of the speech, and that it is a great historical document."

Parke Godwin, the able writer, wrote from the office of the *New York Evening Post* : —

"Let me add my congratulations to the thousands you must have already received for the noble speech in defence of our time-honored championship of the seas. It is thorough, searching, manly, and unanswerable."

Charles L. Brace, the enlightened Reformer and author, wrote from New York : —

"Will you allow me, as one of your great 'Constituency,' to express my admiration of your speech on the Trent affair, as reported by telegraph today? Its enlightened views, broad treatment, sound policy, and thorough historical soundness make it, to my mind, the first of your many public efforts in oratory."

Professor Henry W. Torrey, of Harvard University, wrote : —

"I hope that you will allow an old Whig, who has often differed from you in political opinion, though never seduced into supporting Mr. Buchanan or Mr. Bell, to congratulate you on the position you have taken and so ably maintained on Neutral Rights. From the first moment I trembled for the consequences of the seizure of the insurgents. Captain Wilkes's act appeared to be a portentous blunder, matched only by the truculent indorsements that followed it. It consoles me, however, that this deed has become the occasion for teaching our people their own antecedents, and proving to the world their ability to mortify their pride in the presence of higher claims. . . . . You have nobly substituted the *argumentum ab humanitate* for the *argumentum ad hominem*, which you so justly condemn."

Rev. Convers Francis, the learned Professor, wrote from Cambridge : —

"Most heartily do I thank you for your *great* speech on Maritime Rights, which adds another to your many claims on the nation's gratitude. It is a thorough, exhaustive, and most able piece of argument, — by far the most so which that question called forth, — and extorts praise even from enemies."

John Penington, the bookseller, wrote from Philadelphia : —

"I have delayed reading the 'Maritime Rights' speech till I could enjoy it in the pamphlet form, corrected. It is an admirable compend, a perfect *multum in parvo*. It is a verification of the adage, that 'Doctors don't like to take their own physic,' — our friend Bull being no exception to the rule. I feel much obliged to you for the treat you have afforded me."

Alfred Pell, an intelligent Free-Trader, intimate with England, and manager of an important insurance office, wrote from New York : —

"I have a long letter from [Admiral] Dupont. He wrote when his last advices from the North were of the 22d December, so that he could not have known what action the Government had determined upon ; yet he says, 'Few persons in the fleet approved of the action of Commodore Wilkes, and some of the most intelligent condemned it *in toto*, yet all allowed that it showed high moral courage on the part of Wilkes.' . . . . You show we do not stoop to conquer, and I am sure that our friends on the other side will feel like the lady's maid spoken of by Swift, who said 'that nothing annoyed her so much as being caught in a lie.' "

John E. Lodge, merchant and personal friend, wrote from Boston : —

"Your speech is more complete even than Mr. Seward's note ; it is considered here as your very happiest and ablest effort. The English will open their eyes at some parts of it."

Willard P. Phillips, merchant, wrote from Salem : —

"The truth is, that at last you have satisfied even the commercial community, and they acknowledge that you have more than 'one idea.' They express surprise to find that you have attended to anything but Slavery, which they supposed had occupied all your thoughts and all your time. I am sure that your speech has made many who have heretofore opposed you feel much more kindly towards you; and I congratulate you, both upon this change of feeling towards you, and also upon the delivery of your speech, which, so able and clear, has satisfied even the doubtful ones that the surrender of the 'two old men' was right."

Stephen Higginson, merchant, wrote from Boston : —

"I have read to-day with infinite satisfaction your speech of the 9th on

the Trent affair, and you must allow me to tell you how much I admire it. Crammed with unimpeachable authorities, the argument terse, vigorous, and eloquent, this speech sheds a flood of *American* light upon the subject, which has been wanting to all other essays upon it which have come under my notice."

George Livermore, merchant and student, wrote from Boston : —

"I read your speech on the Trent affair with unqualified admiration, as it was printed in the *Journal*, and I hope a large edition will be published in pamphlet form for preservation. I had supposed Mr. Seward had exhausted all that could be said on 'our side,' but you have given new interest by your wonderful illustrations. The whole tone of the speech is admirable."

Waldo Higginson, an educated man of business, wrote from Boston : —

"Having just completed reading your great speech on the Trent Question, I am impelled to write you, to do my humble part towards thanking you for such a triumphant effort. I think it is exhaustive, abstinent of all not strictly germane to the weighty matter in hand, puts the country in a far more dignified position than it was left by Mr. Seward's late letter to Lord Lyons, eminently courteous towards *present* England, and determines as far as possible that country's position."

Carlos Pierce, merchant, afterwards agriculturist, wrote enthusiastically from Boston : —

"I am especially grateful for a copy of your most remarkable and wonderful speech, delivered in the Senate January 9, on Maritime Rights. It came at an opportune moment, when the whole populace were terribly excited, ready to plan any kind of an expedition to sink the vessel that should be sent to convey the Rebels from Fort Warren. It is hardly possible for you to conceive of the change it wrought in public sentiment in twenty-four hours. It was as oil poured upon the troubled waters to their wounded pride. But it equally astonished and delighted your best friends and worst enemies, and won for you a host of new admirers. It was the most masterly and powerfully convincing argument I have ever read of yours on any subject. The people, the press, the nation, the world, will ever delight to honor the man that displayed the genius equal to such a rare opportunity, and was ready to strike so powerful a blow against a terrible wrong long endured, and in favor of our nation's honor, humanity, and civilization."

Robert K. Darrah, appraiser at the Custom-House, wrote : —

"I am constrained to congratulate you upon making the Thursday speech on the Trent affair. It has fallen on the community with the most happy effect. It was most timely and salutary, and most certainly the great speech of the session in a higher than a rhetorical sense. It will have a most wide

and extended influence : first, to pacificate the public sentiment in this country, and also in England; and then to conciliate European powers, by acceding to the policy and principles they urge upon us; and, finally, by clinching England to the construction of International Law for which we have always contended, and thus driving her from her offensive pretensions pertinaciously adhered to for a century. The speech is applauded on all sides, even by those who do not love our party or you any too well. . . . . The peroration is particularly splendid, argumentative, eloquent, and wise. I repeat, that all sorts of people applaud it, and it is believed that you have done more to put down our Rebellion by your action in the Senate on Thursday than all the major-generals have done in the last six months."

Joseph Lyman, an early friend and college classmate, wrote from Jamaica Plain, near Boston : —

"You cannot think how much I was delighted with your Trent speech. I say nothing of it critically, but that the statements were truly admirable; and you know very well, that, when a case is well stated, it is more than argued, it is adjudged. But this is not why I was so much pleased with it. It was because it was so thoroughly in your best line and manner. It showed you to the public as I want to show you, — as a truly *practical man.* I know as well as you the absurdity of those who call Antislavery a party of one idea, of abstraction and transcendentalism, &c., — as if the one idea of Humanity did not absorb all others of practical legislation."

Rev. Samuel M. Emery, of the Episcopal Church, and a college classmate, wrote from Portland, Connecticut : —

"It is rather late in the day to congratulate you upon the lofty position you have reached on the round of fame and usefulness, but not too late to thank you for your exhaustive speech on the Trent affair. I, as well as thousands of Union-loving people, thank you for that speech."

William G. Snethen, Abolitionist and lawyer, wrote from Baltimore : —

"God bless Mr. Sumner! Who shall say that God has not spared him from the bludgeon of the murderer, not only to defend the poor negro in his God-given rights, but to vindicate our country from the insolence of England, and pronounce judgment against her past wrongs, while according forgiveness to the tardy penitent?

"You said that the correspondence closed with Governor Seward's letter to Lord Lyons. True; but his annotator is not less illustrious. *Par nobile fratrum!* I am curious to see how your speech will be received in England."

John T. Morrison wrote from Washington : —

"I have been so much pleased with your clear, concise, authoritative, and conclusive vindication of the action of the Government in the case, and,

withal, with the sublime eloquence with which you proclaim the triumph of American diplomacy over the long, sullen, and obstinate perverseness of English rule, that I feel it my duty to ask a few copies of your speech for distribution among special friends in Indiana."

George Ely, of Chicago, wrote from Washington, where he was a visitor : —

"I had the pleasure of listening to your great speech, delivered in the Senate of the United States yesterday, on Maritime Rights. Permit so humble an individual as myself, and a stranger to you, to congratulate you upon the unequalled ability of your speech, and the triumphant vindication you have given to the American doctrine upon that question. The country will feel proud, in these times of trouble and doubt, of such an advocate."

Ellis Yarnall, an excellent citizen, much connected with England, wrote from Philadelphia : —

"And now that we have had that speech, everything else that has been said on the subject seems of little worth. Everywhere I hear the same judgment; so that your friends may well congratulate you on what is doubtless one of the most brilliant successes of your life. It seems to me of the greatest importance that the speech should have large circulation in England. The *Times*, I fear, will hardly publish what, from its very moderation and its statesmanlike dignity, will tell so much for the Americans. Yet the leading men of all parties will read it, and I am sure it will greatly help our cause. Your rebuke of England's warlike preparations is most timely, and I am confident good men in England will feel nothing but shame at the remembrance of the menacing action into which they were betrayed, in December, 1861, in a controversy on what you call a question of law."

These unsought and voluntary expressions of opinion show that on this occasion, as when demanding Emancipation, Mr. Sumner was not alone. Weight and numbers were with him. Nobody better than these volunteers represented the intelligence and conscience of the country.

OFFICE OF SENATOR, AND ITS INCOMPATIBILITY WITH OTHER OFFICE.

REMARKS IN THE SENATE, ON THE CASE OF GENERAL LANE, OF KANSAS, JANUARY 13, 1862.

THE question of the seat of Hon. James H. Lane, of Kansas, was referred to the Judiciary Committee of the Senate, at the extra session of July, 1861, when the Committee reported that he was not entitled to his seat. The consideration of the resolution was postponed to the present session.

It appeared, that, previously to the extra session, and before Mr. Lane had taken his seat as Senator from Kansas, he was designated by President Lincoln as Brigadier-General of Volunteers, and entered upon his public duties as such, but without any actual commission or formal appointment according to law. Afterwards, when informed that he could not be Brigadier-General and at the same time Senator, he abandoned the former post and was duly qualified as Senator. Meanwhile Governor Robinson of Kansas, assuming that Mr. Lane had so far accepted another office as to vacate his seat in the Senate, appointed Hon. Frederic P. Stanton in his place, and the Judiciary Committee affirmed the title of the latter.

January 13th, Mr. Sumner spoke against the report.

MR. PRESIDENT, — The Senator from Connecticut [Mr. FOSTER] has presented the objections to the seat of General Lane ingeniously and ably; but I must frankly confess that he fails to satisfy me. I could not resist the brief, but decisive, statement of the Senator from New York [Mr. HARRIS], to which we listened the other day; and the ampler argument of the Senator from New Hampshire [Mr. CLARK], to which

we have listened to-day, seems to leave little more to be said. I shall follow the latter without adding to the argument.

The language of the Constitution applicable to the case is explicit: "No person holding any office under the United States shall be a member of either House of Congress during his continuance in office." But the question arises, Did General Lane hold any such office after he became Senator?

Not considering the case minutely, I content myself with briefly touching two points, either of which will be sufficient to secure his seat to General Lane.

1. At the time when the military appointment was received from the President, General Lane was simply Senator elect from Kansas, and not actually Senator. This cannot be questioned. Until he took the oath at your chair, Sir, he was Senator in title only, not in function. It is true, he already exercised the franking privilege; but this he will also exercise months after his term expires. The franking privilege was all that he possessed of Senatorial functions. On this point I read what is said by Mr. Cushing, in his elaborate work on the Law and Practice of Legislative Assemblies.

"SEC. 2. *Refusal to qualify.* One who is returned a member of a legislative assembly, and assumes a seat as such, is bound to take the oaths required of him, and perform such other acts as may be necessary to qualify him, if any, to discharge the duties of his office. If a member elect refuses to qualify, he will be discharged from being a member, with more or less of obloquy, or none at all, according to the circumstances of his case; but he cannot be expelled, because he cannot as yet discharge the duties of a member."[1]

[1] Elements of the Law and Practice of Legislative Assemblies in the United States, by L. S. Cushing, p. 193.

It is clear that the member elect is not invested with the office until qualified by taking the oath. If illustration of this rule be needed, it will be found in the Parliamentary History of Great Britain. Soon after the Revolution of 1688, two persons returned as members refused to take the oaths and were discharged. But there is an historic precedent almost of our own day. As the long contest for Catholic Emancipation in Great Britain was drawing to a close, Mr. O'Connell was elected by the County of Clare to a seat in Parliament. Presenting himself at the bar of the House of Commons, he refused to take the Oath of Supremacy, then required of all members, and was heard at the bar in support of his claim; but the House resolved that he was not entitled to sit or vote, unless he took this oath; and as he persisted in refusal, a writ was issued for a new election. Still later, the same question arose in the case of Baron Rothschild, the eminent banker of the Jewish persuasion, who, when elected as representative for the city of London, refused to take the oaths required, and on this account was kept out of his seat, until what is known as the Jews' Relief Bill became a law. The conclusion is irresistible, that, until the oath was taken, General Lane had not entered upon his functions as Senator; and here the argument of the Senator from Connecticut, with regard to the effect of the oath, is strictly applicable. An oath in public, at your chair, Sir, being at once of record and sealing the acceptance of an office, is very different from the informal oath taken in private, at a distance, before a local magistrate, which is in the nature of an escrow, until recorded in the proper department.

2. Even if General Lane had been Senator, invested

with the functions of the office, and completely qualified by taking the necessary oath, it is still clear that the military duties he had undertaken did not operate as a resignation. And here I remark, that, when it is proposed to unseat a Senator, to deprive him of a place in this body, — I might almost say to deprive him of his rank, — the evidence must be complete. It must be, according to that old phrase of the Common Law, "certainty to a certain intent in every particular." If there be doubt, either in law or fact, the interpretation should be in his favor. But this case requires no such interpretation. It is true that General Lane had entered upon certain military duties, but he had assumed no military office under the Constitution of the United States. Colonel Baker, a late lamented member of this body, had assumed military duties also. Like General Lane, he, too, had come forward at the summons of the President. It is true that Colonel Baker acted professedly under a commission from a State. General Lane has latterly acted under a similar commission; but at the moment in question he was acting under certain informal and extra-constitutional proceedings of the President, rendered necessary by the exigencies of the hour. The President, by proclamation, undertook to organize an army. He called for volunteers, and also for additions to the regular army. All approved the patriotic act. But I am at a loss to understand how it is supposed that this proceeding can be made effective to oust a Senator of his seat. The act of the President was proper, just, and patriotic; but clearly, and beyond all question, it needed the sanction of Congress to be completely legal. Without such sanction, the army must have drawn its breath from the procla-

mation alone, and every commission would have been merely a token of Presidential confidence, liable to be defeated, first, by the failure of Congress to sanction the proclamation, and, secondly, by refusal of the Senate to advise and consent to the nomination. It was only when the Act of July 22d was passed, that the President was authorized to appoint new Brigadier-Generals. Then it was, for the first time, that a legal addition was made to the national army, and that this very office was legally created which General Lane was charged with accepting some time in June.

I do not forget the retroactive statute passed on the last day of the session, declaring that all the acts, proclamations, and orders of the President respecting the army and navy, and calling out or relating to the militia or volunteers, are approved, and in all respects legalized and made valid, to the same intent and with the same effect as if they had been issued and done under the previous express authority and direction of Congress. The clause in the Constitution against *ex post facto* laws has been restricted by judicial interpretation to criminal matters; but I doubt if even this much questioned interpretation would sanction such a retroactive effect as is now proposed. So much, at least, I do know: the Senate is judge, without appeal, with regard to the seats of its members; and I am sure it will not unseat a Senator by a strained application of an *ex post facto* statute.

The conclusion is twofold: first, that at the time in question General Lane was not a Senator; and, secondly, that at the time in question he was not a Brigadier. The whole case is unreal. It is a question between an imaginary Senator and an impossible Briga-

dier; or rather, it is a question whether an imagined seat in this body was lost by alleged acts under an impossible military commission. The seat of the Senator did not become a reality until some days after General Lane is supposed to have vacated it; and the military commission did not become a possibility until several weeks after General Lane had abandoned it.

Of course, with this view of the law on these two decisive points, it becomes entirely unnecessary to consider the multifarious and indefinite evidence with regard to what General Lane did in the way of accepting his military commission; because nothing that he did, and nothing that he could do, under that impossible commission, would operate legally in the present case.

In reply to Mr. Davis, of Kentucky, Mr. Sumner spoke further.

I have no desire to follow at length the Senator from Kentucky, but I venture to ask the attention of the Senate simply to one of the points he has presented. According to him, General Lane, when elected as Senator, by the mere fact of his election became Senator, so that the Constitution operated to create an incompatibility between the function of Senator and the new office which it is said he accepted. The Senator from Kentucky, as I understood, argued that the function of the Senator, at least for the purpose of this case, commences with his election.

Mr. Davis. Will the Senator from Massachusetts permit me to ask him a question?

Mr. Sumner. Certainly, if the Senator will allow me just to make my statement. The Senator, I say, assumes that the function of the Senator, at least for the purposes

of this case, commences with his election; and in support of that assumption he quotes the Constitution of the United States, as follows: —

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time."

Now, Mr. President, I most humbly submit that the clause of the Constitution just quoted is entirely inapplicable. It has nothing to do with the question. I say, with all respect to the Senator, he might as well have quoted anything else in the Constitution. It does not bear on the case. It relates to an entirely different matter. There is another associate clause which does directly bear on this question. It is as follows: —

"And no person holding any office under the United States shall be a member of either House during his continuance in office."

Those are the words, Sir, governing this case, and they conduct us directly to the question, when and at what time a person becomes a member of either House. That is the simple question.

Mr. Davis. Will the Senator now permit me?

Mr. Sumner. I will finish in one moment. Clearly he becomes a member of this body, so as to discharge his duties as Senator, and to be affected with the responsibilities of Senator, only when he has taken his oath at your desk, Sir, — not one minute before. There is nothing in the Constitution, there is nothing in the practice of any parliamentary body in this country, or

in any other country, I think, pointing to any different conclusion. Here I cannot err. The language of the Constitution is sufficiently precise, and I feel confident that the practice of Congress and of other parliamentary bodies is sufficiently authoritative. Therefore the conclusion is inevitable, that, until the 4th of July, last summer, General Lane, chosen Senator by the people of Kansas, was simply Senator elect, possessed through courtesy of the franking privilege, but enjoying no other Senatorial function.

Now I am ready to answer any question of the Senator.

Mr. Davis. I would ask the Senator from Massachusetts if the office of Senator from the State of Kansas was vacant until General Lane qualified as a member of this body?

Mr. Sumner. In a certain sense I should say it was.

Mr. Davis. When he qualified, did or did not his office have reference to the time of his election, and take its date from the date of his election?

Mr. Sumner. I should say in a certain sense it did. I have already said that he had the franking privilege, and I presume he was entitled to the emoluments of the place, such as they are; but had he not been qualified, he could not have drawn pay. It was only by taking the oath that he was entitled to pay from the Secretary of the Senate.

Mr. Davis. The Senator knows well, that, assuming his premises to be true, whenever the Senator from Kansas consummated his election by taking his seat and taking the oath of office, his term dated back to the date of his election.

Mr. Sumner. The Senator must pardon me, if I cannot assent to his conclusion. He may have been a Senator to a certain extent, but not so as to create incompatibility with another office under the Constitution.

January 15, Mr. Sumner cited two precedents, — the case of Hammond *v.* Herrick,[1] and that of Elias Earle of South Carolina.[2]

The marginal note of the latter says : —

"Continuing to execute the duties of an office under the United States, after one is elected to Congress, but before he takes his seat, is not a disqualification, such office being resigned prior to the taking of the seat."

January 16, the seat of Mr. Lane was affirmed, contrary to the report of the Committee, by the vote of the Senate, — 24 yeas to 16 nays.

[1] Clarke and Hall's Cases of Contested Elections in Congress, p. 287.
[2] Ibid., p. 314.

EXPULSION OF JESSE D. BRIGHT, OF INDIANA.

Speeches in the Senate, January 21 and February 4, 1862.

December 16, 1861, Mr. Wilkinson, of Minnesota, submitted to the Senate a resolution for the expulsion of Hon. Jesse D. Bright, a Senator from Indiana, on account of a letter to Jefferson Davis, which was pronounced "evidence of disloyalty to the United States, and calculated to give aid and comfort to the public enemies." The resolution was referred to the Judiciary Committee, which reported upon it adversely; but, on consideration and debate, it was adopted, so that Mr. Bright was expelled.

January 21, 1862, Mr. Sumner spoke as follows.

MR. PRESIDENT, — The expulsion of a Senator is one of the most solemn acts which this body can be called to perform. The sentence of a court in a capital case is hardly more solemn; for, though your judgment cannot take away life, it may take away all that gives value to life. Justice herself might well hesitate to lift the scales in which such a destiny is weighed. But duties in this world cannot be avoided. When cast upon us, they must be performed, at any cost of individual pain or individual regret, — especially in the present case, where the Senate, whose good name is in question, and the country, whose welfare is at stake, forbid us to hesitate.

In other similar cases, arising out of recent events, where the Senate has already acted, the persons in ques-

tion were absent, openly engaged in rebellion. There was no occasion for argument or discussion. Their guilt was conspicuous, like the rebellion itself. In the present case, the person is not absent, openly engaged in rebellion. He still sits among us, taking part in the public business, voting and answering to his name, when called in the roll of the Senate. His continued presence may be interpreted in opposite ways, according to the feelings of those who sit in judgment. It may be referred to conscious innocence, or it may be referred to audacious guilt.

That he takes his place in the Senate is not, therefore, necessarily in his favor. Catiline, after plotting the destruction of Rome, took his place in the Senate, and listened to the orator who denounced the treason; nor did the Roman patriot hesitate to point his eloquence by the exclamation that the traitor even came into the Senate, — "*etiam in Senatum venit.*" In the history of our country there is a well-known instance of kindred audacity. Benedict Arnold, after commencing correspondence with the enemy, and before detection, appeared at the bar of a court-martial in Philadelphia, and yet, with treason not only in his heart, but already in his acts, thus spoke, without a blush: "Conscious of my own innocence and the unworthy methods taken to injure me, I can with boldness say to my persecutors in general, and to the chief of them in particular," — and, with this introduction, he alleged patriotic service.[1] You know well the result. The traitor thus appearing and speaking in open court continued his treason. The faithful historian does not hesitate to say that "at

[1] Sparks, Life and Treason of Benedict Arnold, p. 140: Library of American Biography, Vol. III.

the moment these declarations were uttered he had been eight months in secret correspondence with the enemy, and was prepared, if not resolved, when the first opportunity should offer, to desert and betray his country."[1] History teaches by example; and the instances that I adduce admonish us not to be governed merely by appearances, but to look at things as they are, and to judge according to facts, against which all present professions are of little worth.

I put aside, therefore, the argument founded on the presence of the person in question. That he still continues in the Senate, and even challenges this inquiry, does not prove his innocence any more than it proves his guilt. The question is still open, to be considered carefully, gravely, austerely, if you will, but absolutely without passion or prejudice, — anxious only that justice should prevail. Your decision will constitute a precedent, important in the history of the Senate, either as warning or encouragement to disloyalty. And since our votes are to be recorded, I am anxious that the reasons for mine should be known.

The question may be properly asked, if this inquiry is to be conducted as in a court of justice, under all the restrictions and technical rules of judicial proceedings. Clearly not. Under the Constitution, the Senate, in a case like the present, is absolute judge, free to exercise its power according to its own enlightened discretion. It may justly declare a Senator unworthy of a seat in this body on evidence defective in form, or on evidence even which does not constitute positive crime. A Sen-

[1] Sparks, Life and Treason of Benedict Arnold, p. 141: Library of American Biography, Vol. III.

ator may deserve expulsion without deserving death; for in the one case the proceeding is to purge the Senate, while in the other it is punishment of crime. The motives in the two cases are widely different. This identical discretion has been already exercised at this very session, as well as the last, in the expulsion of several Senators. And the two early precedents — the first of William Blount, in 1797, and the second of John Smith, in 1807 — both proceeded on the assumption that the Senate was at liberty to exercise a discretion unknown to a judicial tribunal. In the well-considered report of the Committee in the latter case, prepared by John Quincy Adams, at that time Senator, we find the following statement.

"In examining the question, whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume, as the test of their application, either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents, domestic or foreign, and your Committee believe that the result will be the same: that the power of expelling a member must in its nature be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals. The power of expelling a member for misconduct results, on the principles of common sense, from the interest of the nation that the high trust of legislation should be invested in pure hands."[1]

I do not stop to consider and illustrate a conclusion thus sustained by precedent as well as reason. It is obvious that the Senate may act on any evidence satisfactory to show that one of its members is

[1] Annals of Congress, 10th Cong. 1st Sess., col. 57.

unworthy of his seat, without bringing it to the test of any rule of law. It is true that the good name of the individual is in question; but so also is the good name of the Senate, not forgetting also the welfare of the country; and if there are generous presumptions of personal innocence, so also are there irresistible instincts of self-defence, compelling us to act vigorously, not only to preserve the good name of the Senate, but also to save the country menaced by traitors.

Consider, too, the position of a Senator. Elected by the Legislature of his State, he sits for six years in this body, sharing its labors, its duties, its trusts. His official term is the longest known to the Constitution. The Representative, and the President himself, pass away; but the Senator continues. In ordinary times his responsibilities are large; but now they are larger still. On every question of legislation, touching our multitudinous relations, touching our finances, our army, our navy, touching, indeed, all the issues of peace and war, — also on every question of foreign policy, whether in treaties or in propositions disclosed in executive session, — and again, on all nominations by the President, judicial, executive, military, and naval, — the Senator is called to vote; and he is free to join in debate, and to influence the votes of others. With these great responsibilities are corresponding opportunities of knowledge with regard to the counsels of the Government. These doors are often closed against the public, but they are never closed against him. This position of the Senator gives to the question of his loyalty an absorbing interest. Surely it is of no small moment to know if there be among us any person unworthy of all this confidence.

The facts in the present case are few, and may be easily stated; for, beyond certain presumptions, they are of public notoriety, and above all doubt. Indeed, the whole case can be presented as plainly and as unanswerably as a mathematical proposition or a diagram in geometry.

On the 6th of November of the last year, Abraham Lincoln of Illinois was elected President by the popular vote. The election was in every respect constitutional; and yet, in violation of all the obligations of the Constitution, and all the duties of patriotism, a movement was instantly organized in the Slave States to set aside this election, by acts of conventions, if possible, but by violence, if necessary. The movement began in South Carolina, a State always mad with treason; and before the 1st of January then next succeeding, this State formally separated from the Union, renounced the National Government, and ranged in open rebellion. Georgia, Alabama, Mississippi, and Louisiana followed; and the precise object of this rebellion was to form a new government, with Slavery as its corner-stone. The Senators of these States, one after another, abandoned their seats in this Chamber, announcing a determination to seek their respective homes, and leaving behind menaces of war, should any attempt be made to arrest their wicked purposes.

Meanwhile military preparations were commenced by the Rebel States, who made haste to take military possession of forts and other property belonging to the National Government within their borders. Already, before the 1st of January, the Palmetto flag was raised

over the custom-house and post-office at Charleston; it was also raised over Castle Pinckney and Fort Moultrie, in the harbor of Charleston, which, together with the national armory, then containing many thousand stands of arms and military stores, were occupied by Rebel troops in the name of South Carolina. At Charleston everything assumed the front of war. The city was converted into a camp. The small garrison under Major Anderson, after retreating from Fort Moultrie to Fort Sumter, was besieged in the latter fortress. Powerful batteries were erected to sustain the siege. From one of these batteries, on the 9th of January, a shot was fired at the United States steamship Star of the West, with the national flag at her mast-head, bearing reinforcements for the garrison, and the discomfited steamship put back to New York. The darling desire was to capture Fort Sumter, and various plans were devised for this purpose. One Rebel proposed to take the fort by floating to it rafts piled with burning tar-barrels, thus, as was said, "attempting to smoke the American troops out, as you would smoke a rabbit out of a hollow." Another was for filling bombs with prussic acid, and sending them among the national troops. Another thought that it might be taken without bloodshed, — through silver, rather than shell, — simply by offering each soldier ten dollars of Rebel money. Another proposed a floating battery, through which, under cover of the stationary batteries, and with the assistance of an armed fleet, an attack might be made, while from some convenient point a party of sharpshooters would pick off the garrison, man by man, and thus give opportunity to scale the walls. But such a storming, it was admitted, could be accomplished only at a fatal sacrifice of life,

and it was finally determined that the better way was by protracted siege and starvation. Such, at this early day, were the propositions discussed in Charleston, and through the journals there advertised to the country.

The same spirit of rebellion, animating similar acts, appeared in the other Rebel States. On the 3d of January, Fort Pulaski, a fortress of considerable strength near Savannah, was occupied by Rebel troops of Georgia, acting under orders from the Rebel Governor. On the 4th of January, the national arsenal at Mobile, with arms, barrels of powder, and other munitions of war, was seized by Rebel troops of Alabama, as was also Fort Morgan on the same day. On the 11th of January, the marine hospital, two miles below New Orleans, was seized by Rebel troops of Louisiana, and the patients of the hospital, numbering two hundred and sixteen, were ordered away to make quarters for the Rebels, — thus repeating the indefensible atrocity of Napoleon, when, near Dresden, he seized an insane asylum for his troops, and set its inmates loose, saying, "Turn out the mad."[1] On the 12th of January, Fort Barrancas and the navy-yard at Pensacola, with all their ordnance stores, were obliged to surrender to armed Rebels of Florida and Alabama, the commandant reporting to the National Government, "Having no means of resistance, I surrendered, and hauled down my flag." On the 24th of January, the national arsenal at Augusta, in Georgia, also surrendered, upon demand of the Rebel Governor. On the 31st of January, the national branch mint, containing $389,000, and the national sub-treasury, containing $122,000, were seized at New Orleans by the Rebel authorities. Such,

[1] Alison, History of Europe, 2d edit., Vol. IX. p. 553.

most briefly told, are some of the positive incidents of actual war through which the Rebellion became manifest. And you also know, that, throughout the anxious period, when these things were occurring, the National Capital was menaced by the Rebels, proposing especially to disperse Congress, to drive away the National Government, and to seize the National Archives. Nor can you forget that Lieutenant-General Scott, then at the head of our army, under the exigencies of the time, changed his head-quarters from New York to Washington, where he gave his best powers to the national defence, — organizing the local militia, summoning the national troops, planting cannon, and in every way preparing to meet the threatened danger.

Meanwhile these Rebel States, having declared their separation from the National Government and forcibly seized its strongholds and other property within their borders, proceeded to constitute themselves into a political conglomerate, under the title of Confederate States. Their Constitution was adopted on the 8th of February, and the same day Jefferson Davis, of Mississippi, was elected President and commander-in-chief of the armies, and Alexander H. Stephens, of Georgia, Vice-President. Shortly afterwards, on the 21st of February, the President of the Rebellion nominated a Cabinet, in which Toombs, of Georgia, was Secretary of State, Memminger, of South Carolina, Secretary of the Treasury, and Walker, of Alabama, Secretary of War. To this extent had the Rebellion gone. No longer a mere conspiracy, no longer a simple purpose, no longer a mere outbreak, it was an organized body, or rather several organized bodies massed into one, and affecting the character and substance of government. Remember, too, that in all its

doings and pretensions it was a Rebel government, set in motion by conspiracy and sustained by declared Rebellion, which openly disowned the National Government, openly seized the national forts, and openly dishonored the national flag. Of this flagrant Rebellion Jefferson Davis became the chosen chief, as he had already been for a long time the animating spirit. In him the Rebellion was incarnate. He was not merely its civil head, but its military head also. It was he who made cabinets, commanded armies, and gathered munitions of war. His voice and his hand were voice and hand of the Rebellion itself. By his own eminent participation, and the superadded choice of the Rebels, he had become its chief, as much as the old Pretender was chief of the disastrous Rebellion in Great Britain, crushed on the field of Culloden, — as much as Satan himself, when seated on his throne and rallying his peers of state, was chief of an earlier rebellion.

That transcendent outrage, in itself the culmination of the Rebellion, destined to arouse at last a forbearing people, had not yet occurred; but it was at hand. Fort Sumter had not been openly assailed; but the hostile batteries were ready, and the hostile guns were pointed, simply waiting the word of Rebel command, not yet given.

Precisely at this moment, on the 1st of March, 1861, Jesse D. Bright, at the time a Senator of the United States, addressed the following letter to the chief of the Rebellion.

"Washington, March 1, 1861.

"My dear Sir, — Allow me to introduce to your acquaintance my friend Thomas B. Lincoln, of Texas. He visits

your capital mainly to dispose of what he regards a great improvement in fire-arms. I commend him to your favorable consideration, as a gentleman of the first respectability, and reliable in every respect.

"Very truly yours,

"JESSE D. BRIGHT.

"To His Excellency, JEFFERSON DAVIS,
"*President of the Confederation of States.*"

And now, before considering the letter, look well at the parties and their respective positions. It is written by a person at the time Senator, and addressed to a person at the time chief of the Rebellion, in behalf of an unknown citizen, owner of a great improvement in fire-arms. It is proper to mention, as additional facts which will not be questioned, that the author had been for a long time in notorious personal relations with the conspicuous authors of the Rebellion, especially with Jefferson Davis and John Slidell, — that he had notoriously sympathized with them in those barbarous pretensions for Slavery which constitute the Origin and Mainspring of the Rebellion, — and that he had always voted with them in the Senate. All this is notorious; and if the old maxim, *Noscitur a sociis*, or, according to our familiar English, "A man is known by the company he keeps," be not entirely obsolete, then this inquiry must commence with a presumption against such an intimate associate of the Rebels. But, while looking at the author, we must not forget the humble citizen intrusted with the letter. It is a fact, as I understand, that he has been since arrested for treason, and is now in the hands of the law, charged with the highest crime known to justice, while the author still occupies a seat in the Senate. Perhaps this is only another illustration

of the saying of Antiquity, that the law is a cobweb, holding the weak, but which the powerful break through with impunity. The agent is now in custody; the principal is yet in the Senate. So much at present with regard to the parties.

Next comes the letter itself. And here mark, if you please, first, the date, which is the 1st of March. This was at the very moment when the Rebellion was completely organized, and had assumed at all points the undisguised front of war. By various acts of violence it had forcibly dispossessed the National Government of all its military posts in the whole extensive region, except Fort Sumter and Fort Pickens, which it held in siege, — while, by other formal acts, it had assumed to dispossess the National Government of all jurisdiction, civil or military, throughout this region. That such acts constituted "levying of war," within the meaning of the Constitution, is too plain for argument. This phrase, borrowed from the early statute of Edward the Third, has received positive interpretation in the country of its origin, according to which its meaning is clear. There is no better authority than Sir William Blackstone, who, when considering what is "levying of war," says: "This may be done by taking arms, not only to dethrone the king, but under pretence to reform religion or the laws, or to remove evil counsellors, or other grievances, whether real or pretended: for the law does not, neither can it, permit any private man or set of men to interfere forcibly in matters of such high importance."[1] And Lord Mansfield, Chief-Justice of England, on the trial of Lord George Gordon, declared it to be "the unanimous opinion of the Court, that an attempt, by

[1] Commentaries, Vol. IV. pp. 81, 82.

intimidation and violence, to force the repeal of a law, was a levying war against the king, and high treason."[1] I quote these authorities simply that this statement may not rest at any point on my assertion. At the date of this letter, then, there was actual levying of war by Jefferson Davis and his associates against the Government of the United States. And let me add, that this levying of war was not merely that moderate constructive levying of war described by Blackstone, but open, earnest, positive war, backed by armies and by batteries.

You will next observe the address of this letter. It is "To His Excellency, Jefferson Davis, President of the Confederation of States." Bestowing upon this Pretender the title of "His Excellency," the author certainly exhibits a courtesy — at least in form — which usage does not allow the President of the United States. It is well known, that, at the organization of the Government, the title of "Excellency," together with all other titles, was, after debate, carefully rejected for our Chief Magistrate; but the author of this treasonable letter will not deny anything to the Chief of the Rebellion. His profusion appears at once, and his first words become a confession. Not by titles of courtesy do loyal Senators address a traitor. There has been a King of England who on one occasion was called only Charles Stuart, and there has been a King of France who on one occasion was called only Louis Capet; and these great instances show how even the loftiest and most established titles are refused, where treason is in question. Titles are sometimes insincere; but a title voluntarily bestowed testifies at least to the professions of him who bestows

[1] 2 Douglas, R., 592.

it. It is a token of respect, and an invitation to good-will, proceeding directly from the author. And in this spirit was this letter begun.

Not content with bestowing upon this Pretender a title of courtesy denied to our own President, the author proceeds to bestow upon him a further title of office and of power. He addresses him as "President of the Confederation of States," — meaning the very States then engaged in levying war upon the National Government. So far as this author can go, just to the extent of his authority, the Pretender is recognized as President, and the Rebel States are described by the very title which, in defiance of the National Government, they assume. Our own Government steadfastly refuses this recognition. Foreign nations thus far follow substantially the policy of our own Government; but the author of this letter, at the time Senator, makes haste to offer recognition.

Perhaps this double criticism on the address of the letter may seem unimportant. It might be so, if the address had been used in conversation or debate, although then it would be tolerable only if used in derision. But it becomes important, when used directly to the Pretender himself; for then it signifies respect and recognition, while it discloses the mood of the author.

Look next at the contents, or the letter itself, and all that is implied in the address you will find painfully verified. The disloyalty which crops out in titles of courtesy and recognition becomes full-blown in the letter itself, whether we regard its general character or its special import; and I shall now consider these in their order.

In general character the letter is correspondence with

a public enemy, in open war with our own country; or rather let me say it is correspondence with a public rebel. It is obvious that all correspondence of such a character, even without considering its special import, is open to suspicion. Throughout history it has been watched with jealous judgment, as in the cases of Bolingbroke and Atterbury in England, of Pichegru and Fouché in France. Tried even by those technical rules which in the present inquiry we reject, it may help to complete the evidence of treason itself. The well-chosen language of the Constitution, borrowed from an early resolution of the Continental Congress, by whom it was borrowed from the early English statute, authorizes this conclusion. According to the Constitution, "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Here are two classes of cases: the first is levying war, which Jefferson Davis, as we have already seen, was notoriously doing at the date of this letter; and the second is adhering to enemies, giving them aid and comfort. Even if mere correspondence with an enemy would not bring the author within the scope of these words, clearly and beyond all question such correspondence is calculated to give at least moral aid and comfort to the enemy. Nor is it to be disregarded on this occasion, even if it does not reach the technical requirement of treason. If we listen to the Supreme Court of the United States in the case of Bollman, we find this tribunal declaring, that, "if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, *all those who perform any part, however minute, or however remote*

from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors." [1] Assuming the previous league, it cannot be doubted that an act of sympathy and friendship, though minute or remote, extended to persons in rebellion, would be evidence to bring the offender within the cautious grasp of the Constitution, even on technical grounds. If in the present case there was no previous league, there was at least a previous and most notorious fellowship, kindred to a league, by which the author was morally linked to the conspirators.

But the letter in question is a letter of sympathy and friendship, from beginning to end, — such a letter as only one friend could write to another friend. Dated at Washington on the 1st of March, it was calculated, if received by the Pretender, to give him hope and confidence, by inspiring the idea that here in the Senate Chamber there was at least one person still wearing this high trust, who, forgetting all that was due to his country, and forgetting all that was due to the Rebellion, reached forth his hand in friendly salutation. Dated at Washington on the 1st of March, it was calculated, if received, to awaken doubt of the loyalty of the Senate itself, and to encourage belief that here, in this sanctuary of the Constitution, treason might hatch undisturbed. So are we all knit together, that we are strengthened by human sympathy; and the Pretender would have felt new vigor, as the strength of the American Senate was transfused through the declared sympathies of an acknowledged member. The patriot soul recoils from the ancient traitor who flashed a signal torch from a beleaguered citadel; but one of our own

[1] 4 Cranch, S. C. Rep., 126.

number, who yet sits among us, has done this very thing.

Such is the necessary conclusion with regard to this letter, if we look at its general character. But when we consider its special import, the conclusion is still more irresistible. The letter clearly comes within the precise text of the Constitution. It is flat treason. I use no soft words, for the occasion does not allow it. Adhering to the enemy, giving them aid and comfort, must be proved by some overt act, of which Blackstone states the following instances: "As by giving them intelligence, by sending them provisions, *by selling them arms,* by treacherously surrendering a fortress, *or the like.*"[1] Such are precise words of this authority, and I do not stop to enforce them. But this letter is an overt act of adherence, giving aid and comfort, identical with the instances mentioned by Blackstone. Read it. "Allow me to introduce to your acquaintance," so says the letter, "*my friend* Thomas B. Lincoln, of Texas." The bearer of the letter is commended as a friend of the writer: but a friend is something more than associate or confederate; he is almost part of one's self. Thus accredited, his errand is next announced: "He visits *your capital* mainly to dispose of what he regards a great improvement in fire-arms." Mark the words "your capital." Such is the language of an American Senator, writing to the Pretender, whose standard of Rebellion was then flying at Montgomery, in Alabama, which is thus deferentially designated as *his* capital. Observe next the declared object of the visit. It is "to dispose of what he regards a great improvement in fire-arms." Thus does an American

[1] Commentaries, Vol. IV. p. 82.

Senator send actual, open, unequivocal aid to the Chief of the Rebellion. It is true, he does not send him rifles or cannon; but he sends him "a great improvement in fire-arms," through which rifles and cannon and other instruments of death, then preparing to be employed by Rebel hands against the patriot armies of the Republic, might be made more deadly. What are a few rifles, or a few cannon, by the side of such a comprehensive gift? When France, through the disguised agency of a successful dramatist,[1] sent ordnance and muskets to our Revolutionary fathers, she mixed herself positively in the contest, and, under the Law of Nations, Great Britain was justified in regarding her conduct as an act of war. And when an American Senator, without disguise, sends "a great improvement in fire-arms" to the Rebel chief, then engaged in levying war against his country, he mixes himself in the Rebellion, so that under Municipal Law he is a traitor. This conclusion is harsh, and I state it painfully; but it is according to the irresistible logic of the law and the facts.

But the letter contains other language to aggravate its guilt. Not content with sending the "great improvement in fire-arms," the bearer is thus accredited to the Rebel chief: "I commend him to your favorable consideration, as a gentleman of the first respectability, and reliable in every respect." An American citizen going forth on an errand of treason is thus exalted by an American Senator. The open traitor is announced as "a gentleman of the first respectability." This is much to say of anybody; it is too much to say of an open traitor. But he is "reliable in

[1] Caron de Beaumarchais, author of *Mariage de Figaro*.

every respect." All language is to be construed with reference to the matter which it concerns. The bearer of this letter, going forth on an errand of treason, is "reliable in every respect"; and as the universal contains the special, he is reliable especially for the purposes of his treason: and this is the commendation which he bears to the Rebel chief from an American Senator.

Such a letter naturally begins, "My dear Sir," — for the Chief of the Rebellion is evidently dear to the writer. That such a letter should be signed, "Very truly yours, Jesse D. Bright," is natural also, and the words are not mere form. The author evidently, according to the contents of the letter, — as appears alike in its general character and its special import, — belongs to the Rebel chief, and is one of his "own." In writing to the Rebel chief, he honestly begins, "My dear Sir," and honestly closes, "Very truly yours"; but a person thus beginning and thus closing a letter of treason, volunteered to the declared enemy of his country, can hardly expect welcome to the confidential duties of this body.

Of course, in this inquiry, I assume the genuineness of the letter. If this letter were to be considered on technical grounds, the evidence would not be disdained even under the conservative words of our Constitution, according to which "no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, *or on confession in open court.*" We have had the confession of the writer in open Senate, following similar confession in a supplementary letter, to which reference has been made in this debate. There

can be no doubt on this point, and the writer must stand or fall by this letter, unless something has occurred since which can be accepted in extenuation of the unfortunate transaction.

It is true that the bearer of the letter was not able to present it. Before consummating his errand of treason, he was arrested by the watchful officers of the law, and, as we have already seen, is now in custody. The agent is in the hands of the law, while we debate on the seat of his principal. At the risk of introducing a superfluous topic, I cannot forbear adding that the crime of the principal was perfect when he wrote the letter and delivered it to his agent. It was expressly decided in England long ago, that a treasonable communication, "though intercepted, is an overt act of treason"; and this early principle was repeated by the Court of King's Bench, speaking by the voice of Lord Mansfield, in the case of Dr. Hensey,[1] and again by the same court, under Lord Kenyon, in the case of William Stone.[2] It is completely applicable to the present case, even if our inquiry proceeded on technical grounds.

But the history of the transaction is not yet complete. Other incidents have occurred since, which are strangely offered in extenuation of the original crime. At the arrest of the agent, towards the close of last summer, the letter was found among his papers. Of course it excited much attention and some feeling. This was natural. At last the author, who still sits among us, addressed a second letter to his late colleague in this body [Mr. FITCH].

[1] 1 Burrow, R., 646.
[2] 6 Term R., 529.

MR. BRIGHT (*from his seat*). It was not to my late colleague; it was to another Mr. Fitch.

MR. SUMNER. Very well. The letter, dated "At my Farm, September 7, 1861," proceeds as follows: "The letter to which you refer is no doubt genuine. I have no recollection of writing it; but if Mr. Lincoln," the bearer of the letter, "says I did, then I am entirely satisfied of the fact; for I am quite sure I would have given, as a matter of course, just such a letter of introduction to any friend who had asked it." Thus, as late as the 7th of September, in the retirement of his farm, the original letter was approved and sanctioned. I would not exaggerate the effect of this second letter, as I need not exaggerate any point in this unhappy case; but, in view of the character of the original letter, the second letter can only be considered as marking either stolid hardihood of guilt or stolid insensibility to those rules of duty without which no man can be a good citizen; but either way, it only adds to the offensive character of the original transaction, and makes the duty of the Senate more plain.

I do not dwell on other topics of this second letter, because, though exhibiting bad temper and bad principles, they do not necessarily conduct to treason. The author is welcome to express "utter contempt for Abolitionism," and also to declare his early and constant opposition to what he calls "the entire coercive policy of the Government." Such declarations may render him an unsafe counsellor, but they do not stamp him as traitor. And it belongs to us, while purging this body of disloyalty in all its forms, to maintain at all hazards that freedom of speech which is herald and safeguard of all other freedom.

There is other testimony which aggravates the case still further. Not content with writing the traitorous letter, on the 1st of March, 1861, not content with approving and sanctioning this letter on the 7th of September, the author very recently rose in the place yet conceded to him in this Chamber, and deliberately said: "I have done nothing that I would not do over again under the same circumstances, and that I am not prepared to defend here or elsewhere."[1] These words were uttered on this floor, in debate on another case which occurred as late as the 7th of January of this year. Thus was the original act of the 1st of March again affirmed, and the relations existing at that time with the Rebel chief proclaimed and vindicated; and all this in the American Senate, without a blush. Alas for that sensitive virtue which is the grace and strength alike of individuals and of communities! Surely it was wanting in him who could thus brave a just judgment: I fear it was wanting also in ourselves, when he was permitted to go without instant rebuke.

But I hear the suggestion, that at the date of this letter war was not yet flagrant, and that the author did not anticipate an actual conflict of arms. The first part of this suggestion is notoriously false. War had already begun, in the seizure of forts, and in the muster of Rebel armies; nay, more, in the very presence of the author, the gage of battle was flung down on this floor by Senators leaving to take part in the Rebellion. This has been unanswerably shown by the Senator from Minnesota [Mr. WILKINSON]. But the second part of the

[1] Congressional Globe, 37th Cong. 2d Sess., p. 184.

suggestion attributes to the author an ignorance of the well-known condition of things, inconsistent with his acknowledged intelligence. If the progress and development of the Rebellion had been in secret, if it had been masked by an impenetrable privacy, if it had been shrouded in congenial darkness, then this apology might be entitled to attention. But the Rebellion was open and complete; and on the 1st of March it was armed from head to foot, and in battle array against the National Government. Such was the actual condition of things, patent, certain, conspicuous to the whole country. And permit me to say that any apology now offered on pretext of ignorance shows simply a disposition to evade a just responsibility at any hazard of personal character.

I note the further suggestion, that the letter was written in carelessness, or in heedlessness, if you please, and without treasonable intent. Of course such a suggestion must be futile; for every man is presumed to know the natural consequences of his conduct. This is the rule of law, and the rule of patriotism. No man can be admitted to set up any carelessness or heedlessness as apology for treason. And I doubt not you will all agree with me, that a patriot Senator cannot be careless or heedless, when his country is in peril.

But I catch yet another suggestion, that this letter is trivial and insignificant to justify the condemnation of a Senator. Then, indeed, is disloyalty trivial; then is treason itself trivial. It is true, the letter is curt; it contains a single short paragraph only; but I have yet to learn that crime is measured by paragraphs or sentences, and that treason may not be found in a few words as well as in many. True, also, the letter is

familiar in tone; but treason is a subtle wickedness, which sometimes stalks in state and sometimes shuffles in homely disguise. It is our duty to detect and to judge it, whatever form it takes.

Mr. President, let me not be unjust, — let me not lean even ungently against an offender; but you will pardon me, if I add, that against precise testimony, and in the face of unquestioned facts, I can find little in any present professions of loyalty to be accepted even in extenuation of the offence. The duty of the Senate depends upon former conduct, and not upon present professions. It is difficult to imagine any present professions which can restore the confidence essential to the usefulness of a Senator. It is in the hour of trial and doubt that men show themselves as they are, laying up for the future weal or woe, — and not afterwards, when all temptation to disloyalty is lost in the assured danger it must encounter, and when all positions have become fixed by events. Nor do I forget that mere professions have too often been a cover for falsehood. I refer again to the story of Benedict Arnold. After making his escape from the fort which he was about to betray, and finding shelter on board the British frigate, the Vulture, then swimming in the North River, he addressed a letter to General Washington, which begins as follows.

"On board the Vulture, 25 September, 1780.

"Sir: — The heart which is conscious of its own rectitude cannot attempt to palliate a step which the world may censure as wrong. I have ever acted from a principle of love to my country, since the commencement of the present unhappy contest between Great Britain and the Colonies: the

same principle of love to my country actuates my present conduct, however it may appear inconsistent to the world, who very seldom judge right of any man's actions."[1]

Perhaps these very words might now be repeated by the person whose seat is in question. He may not fancy being classed with Benedict Arnold; but the professions of that fugitive traitor are identical with the professions to which we have listened on this floor. There is still another letter to General Washington from the same quarter, only a few days later, that is equally suggestive. Arnold protests against the arrest and impending execution of Major André, who, he says, acted under his directions, and his promise of protection; and he adds, "As commanding officer in the department, I had an undoubted right to transact all these matters,"[2] — precisely as the person whose seat is in question avers in letter and debate that he had undoubted right to open that traitorous correspondence with the Chief of the Rebellion. But I proceed no further with this parallel.

Sir, if the present question were to be decided on grounds of sympathy, it would be pleasant to record our names so as to give the least personal pain. But we should act weakly and ignobly, if on any such ground we failed in the double duty now so urgent, — first, to the Senate, of which we are members, and next, to that country which has a right to our truest and most unhesitating devotion. If there be among us any person still enjoying the confidential trusts, legislative, diplomatic, and executive, of this Chamber, who, since Rebellion hoisted its flag and pointed its cannon, has

1 Writings of Washington, ed. Sparks, Vol. VII., Appendix, p. 533.
2 Ibid., p. 540.

failed in that loyalty which is an inviolable obligation, — even though his offence may not have the deepest dye of treason, — he is unworthy of a seat in the Senate; and be assured, Sir, that our country, which knows so well how to pardon all that is pardonable, expects that no such person, whatever his present professions, shall be recognized any longer as Senator.

Do not hesitate, then. The case is clear, and impartial history will so record it. No argument, no apology, no extenuation can remove or mitigate its requirements. There is a courage which belongs to this peaceful Chamber as much as to the battle-field, and now is the occasion for it. Above all, let no false tenderness substitute sympathy for judgment; and remember well, that, while casting out a faithless Senator, you will elevate the Senate and inspire the country.

Mr. Sumner was followed on the same day by Mr. Lane, of Indiana, colleague of Mr. Bright, and then by Mr. Bright himself, who was especially bitter in allusion to him, alleging personal difference as the motive of his conduct. Mr. Sumner replied at once to this imputation.

Mr. President, — The Senator from Indiana [Mr. Bright], in the speech he has just made, referred to his personal relations with myself, and intimated, if he did not charge, that there had been some personal question or difference between us. Sir, ——

Mr. Bright. Mr. President, ——

Mr. Sumner. Excuse me.

Mr. Bright. I intimated no such thing, Sir.

Mr. Sumner. Let me finish. Sir, that is not the fact. Since I have been a member of this body, now more than ten years, it has been my fortune to mix in

the debates on important public questions. On these occasions I have encountered, as the record shows, the opposition of that Senator, and of his constant associates in this body, all of them now in open rebellion. With the Senator and his constant associates I never had personal question or difference. Therefore, when the Senator asserts any such thing, or suggests it, he goes entirely beyond the record, and I could not allow the debate to close to-night without interposing my positive denial.

Sir, I have approached this painful question free from all personal prejudice. I have no feeling against the Senator. There has been nothing in our past relations to turn the scales by a feather's weight.

The speech of Mr. Bright, to which allusion is made, does not appear in the official report. It was taken down and written out by the reporters, and then submitted to Mr. Bright, who never returned the manuscript. At the proper place in the *Congressional Globe*,[1] where the speech should be, is the following: "Mr. Bright next addressed the Senate. [His speech will be published in the Appendix.]" It is not found in the Appendix, which is explained by the following in the Index for the Session, under the name of JESSE D. BRIGHT: "The manuscript of the speech referred to on page 418 was retained by Mr. B." So that the speech was suppressed by him.

February 4th, after several others had spoken, Mr. Sumner spoke again as follows.

MR. PRESIDENT, — This debate is about to close; but before the vote is taken I wish briefly to review it, and to show again that there is but one conclusion which can truly satisfy the Senate or the country. If your last judgment in this case were not of incalculable importance both for the Senate and the country, helping to elevate the one and to inspire the other, I

[1] 37th Congress, 2d Session, p. 418.

should not venture again to claim your attention. Such a precedent, so fruitful in good influences, should be completely commended and vindicated, that it may remain forever a commanding example.

Among all who have spoken, we naturally yield precedence on this occasion to the Senator from Indiana [Mr. BRIGHT]. His speech was not long, but it afforded ample ground for regret, if not for condemnation. It showed offensively the same spirit which is found in the original letter; nor did it suggest anything in apology, except that the bearer of the letter was his lifelong friend, and that, when writing the letter, he did not dream of war: in other words, an act of unquestionable disloyalty was put under the double cloak of lifelong friendship and professed ignorance. The real condition of things was not noticed, while he sought to serve a friend. Because the bearer of the letter was his lifelong friend, and because the Senator did not see war ahead, therefore he was justified in sending forth this lifelong friend on an errand of disloyalty, ay, of treason itself, and of making him the instrument of aid and comfort to an organized rebellion. Of course such an argument shows weakness, and not strength; and the very weakness out of which it sprung naturally became impassioned and unjust. If any personal feeling could disturb that perfect equanimity which with me, on this occasion, is a sentiment and a duty, I might complain of that vindictive tone which broke forth, not only in personal imputation, but also in menace that what I said on the case of the Senator I dared not say again here or elsewhere; but I make no complaint. It is sufficient for me that I spoke in the conscious discharge of duty, and that I know of nothing

in the vindictive tone or in the menace of the Senator that can interfere with such duty, as I understand it. Therefore I put aside what he has said, whether of personal imputation, or of personal menace, or of argument; for they all leave him worse than if he had continued silent.

I put aside also the elaborate argument, lasting for more than a whole day, of the Senator from Kentucky [Mr. DAVIS], practically exalting Slavery above the Constitution, and, while life is sacrificed and property is taken, while great rights are trodden down and all human energies are enlisted in defence of our country, insisting that Slavery alone is too sacred to be touched. Sir, I put aside this argument, because it is utterly out of place and irrelevant; and I trust it is not my habit in debate to ramble from that straight line which is the shortest way to the desired point. There is a time to sow and a time to reap; and there will be a time to discuss the constitutional power of Congress to end this Rebellion, even if, in so doing, it is constrained to end Slavery itself.

I put aside, also, the suggestion of the Senator from New York [Mr. HARRIS], to the effect that the Senator from Indiana is now on trial, that our proceedings are judicial, and that the evidence before us is insufficient to satisfy the requirements of such a case. Surely this assumption proceeds on a mistake. The Senator from Indiana is not on trial, in the ordinary understanding of that term; nor are our proceedings judicial; nor is the evidence insufficient for the case. Under the Constitution, each House, with the concurrence of two thirds, may expel a member; but this large discretionary power is given simply for the protection of the body in the

exercise of an honest and honorable self-defence. The Senate itself is on trial just as much as the Senator; and permit me to say that the Senate will condemn itself, if it allow any person to continue among its members who has forfeited that peculiar confidence in his loyalty which is essential to his usefulness as Senator. It is vain to say that the evidence is insufficient. Technically and judicially it may be so; but according to all legislative precedents and all the rules of common life it is obviously sufficient, for it is beyond all practical doubt. My friend from New York did not hesitate at this session to vote for the expulsion of Breckinridge, of Polk, and of Johnson, without one scrap of evidence that he would recognize as a judge on the bench. How can he require evidence now which he did not require then?

I put aside, also, the argument of the Senator from Pennsylvania [Mr. COWAN], so carefully and elaborately stated, to the effect that on the 1st of March, when the disloyal letter was written, there was no war actually existing between the Rebel States and the United States. Even if this assumption were correct, even if the United States were still hesitating what course to adopt, nothing is clearer than this: the Rebel States were in rebellion, — organized, armed, and offensive, — with the avowed purpose of overthrowing the National Government within their borders; and such rebellion was, beyond all question, a levying of war under the Constitution of the United States, so that all adherence to it, giving aid and comfort, was treason itself. But even if not disposed to admit actual levying of war on the part of the Rebels, — though of this there can be no doubt, — there was surely preparation and purpose so to do;

and any contribution to such preparation and purpose was disloyalty, if not treason. Clearly, Jefferson Davis at that time was a traitor, at the head of traitors. What, then, can be thought of a Senator who offered arms to him?

I put aside, also, the suggestion of the Senator from New Jersey [Mr. TEN EYCK], founded on the language of the President in his inaugural address of the 4th of March. It is true that the President spoke of the Rebels in generous, fraternal words, such as became the Chief Magistrate of a great people, not yet renouncing the idea of conquering by kindness, and not forgetting that Leviathan was tamed by a cord. But, whatever the language of the President, it is none the less clear that the Rebellion at that very moment was completely organized by a succession of overt acts, which fixed the treasonable position of its authors, and especially of its chief, to whom the letter offering arms was addressed.

I put aside, also, the argument of the Senator from California [Mr. LATHAM], especially that part founded on the tolerance shown to treason, when uttered here by the retiring Rebels. Nobody questions that treason was uttered on this floor, or that treasonable counsels went forth from this Chamber. But the Senate was then controlled by the associates of the Senator of Indiana, and it was not in our power to check or chastise the traitors. It is within the recollection of many that those utterances were heard on this side of the Chamber, not only with indignant patriotism, but with bitter, stinging regret at the abject condition of the Senate, then so entirely in the hands of traitors that we were obliged to hear in silence. Surely such utterances, wicked with treason, constituting the very voice of

the Rebellion, cannot be an apology for the disloyal letter of the Senator; nor can silence, when we were powerless to act, be any argument for silence now that power and responsibility are ours.

I agree with the Senator from Illinois [Mr. BROWNING], that the whole conduct and declaration of the author may be legitimately employed to elucidate the character of this letter; but I found no supplementary charge on such conduct or declaration. Others may use the argument that the Senator has declared himself against coercion of the Rebel States, or that he has refused to vote the necessary means for the suppression of the Rebellion; but I use no such argument. Much as I lament such a course, and justly obnoxious as I regard it, yet I cannot consider it as an argument for expulsion of the Senator. Freedom of debate is among the triumphs of modern civilization; and it shall never be impaired by any vote or word of mine. To this freedom I have held fast, when almost alone in this body; and what I have steadily vindicated for myself against all odds I shall never deny to another. Therefore, if I am the judge, there is no Senator who will not always be perfectly free to speak and vote as he thinks best on every question that shall legitimately arise; but beyond this immunity he must not go. He shall not talk treason; he shall not parley with rebellion; he shall not address to it words of sympathy and good-will; especially, he shall not recognize its chief in his pretended character of President, nor shall he send him improved fire-arms to be employed in the work of treason.

Putting aside all these considerations, the case against the Senator from Indiana is clear. All apologies, all

excuses, utterly fail. It is vain to say that the bearer of the letter was his lifelong friend, as it is vain to say, also, that the Senator did not dream that there would be war. The first apology is as feeble as the second is audacious. If the Senator did not dream that there would be war, then why send arms to the chief of the Rebellion? To Jefferson Davis as a private citizen, to Jefferson Davis as a patriot Senator, there was no occasion or motive for sending arms. It was only to Jefferson Davis as chief of the Rebellion that arms could be sent; and to him, in that character, they were sent. But even if the Rebellion were not at that time manifest in overt acts, — as it clearly was, — still the sending of arms was a positive provocation and contribution to its outbreak, especially when the arms were sent by a Senator. And now, at the risk of repetition, I say again, it is not necessary that the war should have been commenced on the part of the United States. It is enough, that, on the part of Jefferson Davis, at the date of the letter, there was actual levying of war, or, at least, a purpose to levy war; and in either of these two cases, the latter as well as the former, the guilt of the Senator offering arms is complete, — call it treason, or simply disloyalty, if you will.

It is vain that you seek to surround the Senatorial letter-writer with the technical defences of a judicial tribunal. This will not do. They are out of place. God grant, that, in the administration of justice, a citizen arraigned for his life may always be presumed innocent till he is proved guilty! But, while zealously asserting this presumption in a criminal trial, I utterly deny it in the present case. The two proceedings are radically unlike. In the one we think most of the

individual; in the other we think most of the Senate. The flag-officer of a fleet, or the commander of a garrison, when only suspected of correspondence with the enemy, is without delay deprived of command; nor can any technical presumption of innocence be invoked in his defence. For the sake of the fleet, for the sake of the garrison, which must not be betrayed, it is your duty to see that he is deprived of command. Nor can a suspected Senator, with all his confidential trusts, legislative, diplomatic, and executive, expect any tolerance denied to a suspected flag-officer, or to a suspected commander of a garrison. If not strong, pure, and upright in himself, he must not expect to find strength, purity, and uprightness in any presumption of innocence, or in any technical rule of law. For the sake of the Senate, he must be deprived of his place. Afterwards, should he be arraigned at law, he will be allowed to employ all the devices and weapons familiar to judicial proceedings.

There is another illusion into which the Senator has fallen; and it seems to me that the Senator from New York, and perhaps other Senators, have followed him. It is the assumption, that, in depriving the Senator of his seat, we take from him something that is really his. This is a mistake. A Senator is simply a trustee. The Senator is trustee for Indiana. But his fidelity as trustee is now drawn in question; and since no person is allowed to continue as trustee whose character is not above suspicion, — inspired *uberrimâ fide*, according to the language of the law, — the case of the Senator should obviously be remanded to the State for which he still assumes to act. Should he be wronged by expulsion, then will that State promptly

return him to his present trust, and our judgment will be generously reversed. The Senator has no right for himself here; he does not represent himself; but he represents his State, of which he is the elected, most confidential trustee; and when his fidelity is openly impeached, there is no personal right which can become his shield. Tell me not of the seat of the Senator. Let the Senator be cautious in language. By courtesy the seat may be his; but in reality the seat belongs to Indiana; and this honored State, unsurpassed in contributions to the patriot armies of the Republic, may justly protest against longer misrepresentation on this floor by a disloyal Senator.

But the Senator from Pennsylvania [Mr. COWAN] exclaims — and the Senator from New York follows him — that the offence of the Senator is "treason or nothing." For myself, I have no hesitation in expressing the conviction that it is treason. If it be not treason in a Senator to send arms to an open traitor, whom he at the same time acknowledges in his traitorous character, then it were better to blot out the crime of treason from our statute-book, and to rase its definition from the Constitution. Sir, it is treason. But even if not treason according to all the technical requirements of that crime, obviously and unquestionably it is an act of disloyalty so discreditable, so unworthy, and so dangerous as to render the duty of the Senate imperative. Is it nothing that the Senator should write a friendly letter, make open acknowledgment, and offer warlike aid to a public traitor? Is it nothing, that, sitting in this Chamber, the Senator should send to the chief of the Rebellion words of sympathy and arms of power? Is it nothing that the Senator should address the traitor in

terms of courtesy and official respect? Is it nothing that the Senator should call the traitor "His Excellency," and should hail him "President of the Confederation of States"? And is it nothing that the Senator should offer to the traitor thus addressed what of all things he most coveted, to be turned against the Constitution which the Senator has sworn to support?

> "Is this nothing?
> Why, then the world, and all that 's in 't, is nothing;
> The covering sky is nothing: . . . .
> . . . . . nor nothing have these nothings,
> If this be nothing."

Sir, the case is too plain for argument. You cannot argue that two and two make four, that a straight line is the shortest distance between two points, or that the sun shines in the sky. All these are palpable to reason or to sense. But, if I did not see before me honored Senators, valued friends, who think otherwise, I should say that to the patriot soul it is hardly less palpable that a Senator, acknowledging in friendly correspondence the chief of a Rebellion set on foot in defiance of the United States, and sending to him arms, whose only possible use was in upholding the Rebellion, has justly forfeited that confidence which is as much needed as a commission to assure his seat in this Chamber. The case is very plain, and we have taken too much time to consider it. We have been dilatory when we ought to have been prompt, and have hearkened to technical defences when we should have surrendered to that indignation which disloyalty is calculated to arouse.

The Senator from New Hampshire [Mr. CLARK] has reminded us — as John Quincy Adams reminded an-

other generation — of that beautiful work of Art in the other wing of the Capitol, where the Muse of History, with faithful pen, registers the transactions of each day, and he trusted that over against the record of past disloyalty another page might beam with the just judgment that followed. But there is another work of Art, famous as Art itself, and proceeding from its greatest master, which may admonish us precisely what to do. The ancient satrap Heliodorus, acting in the name of a distant sovereign, entered that sumptuous temple dedicated to the true God, where stood the golden candlesticks and hung the veil which was yet unrent, and profanely seized the riches under protection of the altar itself, when suddenly, at the intercession of the high priest, an angelic horseman armed with thongs is seen to dash the intruder upon the marble pavement, and to sweep him with scourges from the sacred presence. Now that disloyalty, in the acknowledged name of a distant traitor, intrudes into this sanctuary of the Constitution, and insists upon a place at our altar, there should be indignant chastisement, swift as the angelic horseman that moves immortal in the colors of Raffaelle. In vain do you interpose appeals for lenity or forbearance. The case does not allow them. I know well the beauty and the greatness of charity. For the Senator I have charity; but there is a better charity due to the Senate, whose solemn trusts are in jeopardy; and even if you do not accept completely the saying of Antiquity, which makes duty to country the great charity embracing all other charities, you will not deny that it is at least a commanding obligation, by the side of which all that we owe the Senator is small. And, Sir, let us not forget, let the precious

example be present in our souls, that He who taught the beauty and the greatness of charity was the first to scourge the money-changers from the temple of the Lord.

Mr. Davis, of Kentucky, followed. Some of his words are quoted, from their bearing on Mr. Sumner's opposition to Slavery.

"The gentleman shakes his imperial locks like a Jove, and menaces death and destruction to Slavery. I thank my stars that the gentleman is not yet the Jove of this land, nor the Jove of this Senate either. There are minds as exalted and as cultivated as his, and there are wills as patriotic and as true to the Constitution and to the country as his, and altogether independent of his; and it is to those minds that I appeal, whenever a question involving the interests of my constituents comes up here, not to the mind of the gentleman from Massachusetts. I know, Sir, what fate would await Slavery, if he could speak the fiat. He is, however, but one member of this body."

February 5th, after further debate, the final vote was taken on the resolution of expulsion, and resulted in yeas 32, nays 14.

THE VICE-PRESIDENT. Upon this question the yeas are 32, the nays are 14. More than two thirds having agreed to the resolution, it is passed. [*Applause in the galleries.*]

THE VICE-PRESIDENT. Order! Order!

The Washington correspondent of a Northern journal described the scene of the vote.

"All seemed to feel that they were acting, not for the present only, but for coming time. The great crowd of spectators filling every available spot, and the presence of many of the members of the House, added to the impressiveness of the scene. Amid breathless anxiety and profound silence the roll-call commenced. For a time the ayes and noes bore a doubtful proportion. Senator Willey, having held his vote in abeyance till the last, had just announced that he should vote against the expulsion, and Senator Carlile, who had been generally supposed to favor the resolution, also joined his colleague among the noes. As the vote proceeded, the ayes became almost uninterrupted, and we were prepared for the result. A few moments more and the event was over, — felt by those who witnessed it to be scarcely less solemn than the infliction of death itself, and which will probably be cited in precedent when all its spectators shall have long been dust."

ANSWER OF A WITNESS CRIMINATING HIMSELF.

Remarks in the Senate, on the Bill relating to Witnesses before Committees, January 22, 1862.

In considering the bill amending the provisions of the second section of the Act of January 24, 1857, enforcing the attendance of witnesses before Committees of either House of Congress, the following clause was objected to : "And no witness shall hereafter be allowed to refuse to testify to any fact or to produce any paper touching which he shall be examined by either House of Congress or any Committee of either House, for the reason that his testimony touching such fact or the production of such paper *may tend to disgrace him or otherwise render him infamous.*" In the debate that ensued Mr. Sumner spoke as follows.

MR. PRESIDENT, — There seems to be much inquiry as to the Common Law on this question, and various points are presented.

It is asked, for instance, whether a witness is obliged to answer, where his answer will render him infamous. I know the differences on this point, but cannot doubt that by the Common Law the witness is obliged to answer in such a case, — most certainly, if the question is relevant and material.

Again, it is asked if a witness is permitted to determine for himself whether to answer the question proposed. Here also the Common Law, when properly interpreted, is clear. The witness cannot be the final judge. He must submit to the decision of the

Court, which will determine whether his answer may criminate him, by revealing either guilt or a possible link in the evidence of guilt.

But then, Mr. President, why speak of the Common Law? Why revert to these antiquarian inquiries, when we have the Constitution of the United States specifically dealing with this very question? In the fifth article of the Amendments it is provided that "no person shall be compelled *in any criminal case* to be a witness against himself." Such are the very words of the Constitution, derived from the Common Law, but imparting precision and limitation to the Common Law. Now it seems to me it will be enough, if, on this occasion, we follow the text of the Constitution. As in the pending proposition there is nothing inconsistent with the Constitution, we need not ransack the wide and ancient demesnes of the Common Law to stir up difficulties. Whatever the rule at Common Law, plainly under the Constitution its operation is restricted to a "criminal case," leaving a case of infamy untouched.

I am free to say, Sir, — and what I am about to remark is particularly in answer to the Senator from New York [Mr. HARRIS], — that, if this question were presented independent of the Constitution, I should be little disposed to follow the Common Law. In my judgment the Common Law is less wise here than it ought to be. I cannot but think that the jurisprudence of other civilized countries, derived from the Roman Law, supplies a better rule. There is no other civilized jurisprudence under which a witness is excused from answering any question, though the answer may affect his character or honor, or even render him criminal. The Common Law, at an early day, under a generous

inspiration, adopted a contrary principle, which, crossing the ocean with our forefathers, is embodied in the text of the Constitution. Finding it there, I accept it; certainly I do not quarrel with it; but I cannot consent that it shall receive any expansion, especially interfering with the public interests. I hope the bill may pass as it comes from the House, without amendment. It is a good bill.

Mr. Harris, of New York, moved as an amendment: "Nor shall this Act be so construed as to require any witness to testify to any fact which shall tend to criminate him." The question, being taken by yeas and nays, resulted, yeas 19, nays 21; so the amendment failed.

The bill was then passed, and, January 24th, approved by the President.[1]

[1] Statutes at Large, Vol. XII. p. 333.

LIMITATION OF DEBATE IN THE SENATE.

Remarks in the Senate, on a Five Minutes' Rule, January 27 and 29, 1862.

A Joint Rule, moved by Mr. Wade, of Ohio, to facilitate secret sessions, contained a restriction on debate, which was afterwards struck out on his own motion. Mr. Sumner united with others against this restriction, and some of his remarks are preserved here as a record of opinion.

January 27th, he said : —

I AM glad the Senator has modified his rule, so far as it bears on the length of speeches. He thinks a speech of five minutes long enough. If all had the happy faculty of my distinguished friend, who so easily speaks to the point, I doubt not it would be long enough; but we must take Senators as they are, according to our experience, and allow for their ways. Besides, such a rule would be a departure from the constant policy of the Senate.

The Joint Rule was much discussed, and underwent various modifications, some on motion of Mr. Sumner. January 29th, a substitute was moved by Mr. Sherman, of Ohio, and subsequently adopted, which contained the restriction on debate abandoned by his colleague, as follows : —

"If decided in the affirmative, debate shall be confined to the subject-matter, and be limited to five minutes by any member. *Provided*, That any member shall be allowed five minutes to explain or oppose any pertinent amendment."

This led Mr. Sumner to speak again.

I MUST confess that I hesitate to place among Rules of the Senate a limitation of debate to five minutes, — not that I desire in our conversations on business to exceed that allowance. Personally I am content with what pleases my associates; but I doubt the expediency of such a rule, which thus far is a stranger among us.

Limitations of debate in various forms play a large part in the other Chamber. Shall they begin here, even in the small way proposed? A five minutes' rule is not the previous question, with its death-dealing *garrote*, but it is a limitation of debate, and the Senate has from the beginning set itself against any such restriction, insisting always upon the largest latitude and amplest opportunity.

If there were any obvious good to be accomplished by such a rule, if there were any exigency seeming to require the sacrifice, I should welcome it; but I put it to Senators, whether experience in Executive Session does not show that it is unnecessary. I cannot doubt that the very business contemplated by the rule would be discussed directly, plainly, briefly, according to the essential nature of the question, even without any restriction. But, if unnecessary, why make a change which will look so ill that it were better to bear inconvenience rather than have such a deformity?

It is enough, if on a critical occasion we are able to close our doors, leaving the great privilege of debate unchecked, to be employed as sword or buckler, according to the promptings of patriotism and the conscience of Senators.

INDUSTRIAL EXHIBITION AT LONDON.

SPEECH IN THE SENATE, ON THE JOINT RESOLUTION PROVIDING FOR REPRESENTATION THERE, JANUARY 31, 1862.

JANUARY 31st, the Senate proceeded to consider the joint resolution reported by Mr. Sumner from the Committee on Foreign Relations, providing for representation at the Exhibition of the Industry of all Nations at London in the year 1862.

Mr. Hale, of New Hampshire, said that he was "entirely opposed to this whole thing." Mr. Sumner then spoke as follows.

MR. PRESIDENT, — The Senator from New Hampshire [Mr. HALE] objects to the joint resolution, but he assigns no reason. When I make a personal appeal to him, he declines to answer. Of course, that is according to his right. He may be silent, though we are always too happy when he speaks. It becomes my duty, therefore, to explain the resolution, which I shall do in few words.

At the extra session of Congress in July last, a joint resolution was adopted in the following words: —

"That the President be, and he hereby is, authorized to take such measures as shall to him seem best to facilitate a proper representation of the industrial interests of the United States at the Exhibition of the Industry of all Nations to be holden at London in the year 1862, and the sum of two thousand dollars is hereby appropriated for the incidental expenses thereof."

The resolution passed Congress, and was approved by the President on the 27th of July. Under it a Commission was organized by the President, with the Secretary of State as Chairman. Associated with him were eminent gentlemen from different walks of life, from different parts of the country ——

Mr. Grimes. What parts?

Mr. Sumner. All parts, — the West, the North, and the East.

Mr. Grimes. Who from the West?

Mr. Sumner. You will find the names on the printed list. At a meeting in Washington, a sub-committee was organized for the direction of business. Through this sub-committee a correspondence has been conducted with persons all over the country interested in the Exhibition, and industrial products have been gathered at New York, to be forwarded to London; but their proceedings are stopped for want of means, and the actual question is simply this: Will the Senate allow the business already commenced under their auspices to fail, or will they make the needful appropriation to carry it forward?

There is at least one precedent. Ten years ago witnessed an industrial exhibition in London, which attracted the attention of the civilized world. There was no provision in advance by the Government of the United States for any representation there; but patriotic citizens came forward at the last moment, volunteered money and representation, and through their activity we became honorably known there, — so, indeed, I think I may say, as to gain renown for our industrial products. I would not exaggerate; but nobody can for-

get the triumph of the American reaper or the American mower. I believe I state what cannot be denied, when I say, that, through the representation of American industry at that exhibition, we gained not only fame abroad, but new fields of activity for our industry, and new markets for our homely, but most useful products.

Now there is to be another exhibition, and the question is, whether our country shall be represented. An appropriation is needed for this purpose. The Committee, after most careful deliberation, not acting, I assure you, hastily, came to the conclusion that our country should be represented there, and they recommended the appropriation of the modest sum of $35,000. Persons interested in the subject desired a larger appropriation. The Committee concluded in favor of $35,000, as the utmost they would ask from Congress at the present time. Accordingly they have made that recommendation, believing it for the general welfare.

I do not know the objection of my friend from New Hampshire. Perhaps he is against any representation. If so, I can understand that he should oppose the appropriation. But is his objection founded on grounds of economy peculiar to the present moment, or is it because he is against such appearance at any time? If founded on grounds of economy peculiar to the present moment, I must say I cannot enter into his idea. Nobody more completely than myself can appreciate the importance of bending every corporal and intellectual agent to the work of putting down the Rebellion; but I am unwilling that meanwhile all the glorious and beneficent arts of peace should slumber. Nor would I, even while pushing this war to victory, cease to watch with guardian care the industrial interests of my coun-

try. Those interests, I am sure, will be advanced, if we allow them to be represented at this great centre of industry; and so will all the national resources increase and multiply. And this is not simply because the exhibition is in London, or because it may open a market in London, but because through London we approach all the great markets of the world; and while making our products known in the great metropolis, we make them known wherever civilization extends. The exhibition will be an immense fair, to which exhibitors can have access only through their respective governments. I am unwilling to deprive American citizens of this opportunity.

I assume, therefore, that my friend cannot be against contributing to this exhibition simply on grounds peculiar to this moment. It must be on some other broader, more general ground. I must say that I cannot enter into that idea, either. If it was good for us to be represented ten years ago, — and I believe all, after the exhibition, were satisfied that it was good for us, — I believe it better now. Surely, all this my friend has at heart. I hope he will not forget that the interests of farmers, the interests of inventors, the interests of mechanics, the interests of all who toil and of all who produce, — in one word, the great diversified interests of the people, cannot fail to be promoted by this opportunity. And here is reason enough for the small outlay.

In the brief debate that ensued, Mr. Lane, of Indiana, said : —

"The sword and the cannon are the reapers now, and the Rebels are the harvest; and to that purpose and to those reapers I shall devote my attention."

The joint resolution was lost, — yeas 17, nays 22; so that at the London Exhibition the United States had no representation.

ORDER IN BUSINESS: EACH QUESTION BY ITSELF.

Remarks in the Senate, February 6, 1862.

The Senate had under discussion an Army Bill, when Mr. Doolittle, of Wisconsin, moved an amendment reducing and regulating the mileage of Members of Congress. The remarks of Mr. Sumner were not addressed to the merits of the question, but to the impropriety of dealing with it in the pending bill.

MR. PRESIDENT, — It seems clear that the discussion in which we are launched is a departure from the question before the Senate. The pending bill is "to define the pay and emoluments of certain officers of the army, and for other purposes," and an amendment is moved to reduce and regulate Congressional mileage. By what process of association the two are brought together it is not easy to see. Certainly nobody looking for light on Congressional mileage would think of exploring our army legislation.

My experience teaches me the advantage, not to say the beauty of order, in the business of legislation, as in all other business. There is a proper place for everything, and everything should be in its proper place. Especially should things plainly incongruous be kept apart, and without commixture. But what more unreasonable than the commixture proposed? Each meas-

ure may be good in itself, but the two do not go together. They are without natural or logical connection. One is not the incident of the other, nor in any respect germane to the other. They should be in separate bills, and be discussed separately.

Here we are in high debate on the Army Bill, and all at once the subject is changed, although the original bill is still before the Senate. But Congressional mileage is enough by itself. Already it has occupied the attention of the country, has been discussed in the newspapers, and especially in the other House. It is a Serbonian bog, not indeed "where armies whole have sunk," but only Members of Congress. Are you ready, while considering another question, to revive this debate, making it the accident of another, with which it has nothing to do? Is it advisable? Is it according to the natural order of business?

The Mileage Amendment was adopted, but the bill failed between the two Houses.

STATE REBELLION, STATE SUICIDE; EMANCIPATION AND RECONSTRUCTION.

RESOLUTIONS IN THE SENATE, FEBRUARY 11, 1862. WITH APPENDIX.

MR. SUMNER sent to the Chair a series of resolutions, which he described by their title. They were then read, as follows.

Resolutions declaratory of the Relations between the United States and the Territory once occupied by certain States, and now usurped by pretended Governments without Constitutional or Legal Right.

WHEREAS certain States, rightfully belonging to the Union of the United States, have, through their respective Governments, wickedly undertaken to abjure all those duties by which their connection with the Union was maintained, to renounce all allegiance to the Constitution, to levy war upon the National Government, and, for the consummation of this treason, have unconstitutionally and unlawfully confederated together with the declared purpose of putting an end, by force, to the supremacy of the Constitution within their respective limits;

And whereas this condition of insurrection, organized by pretended Governments, openly exists in North Carolina, South Carolina, Georgia, Florida, Alabama, Mis-

sissippi, Louisiana, Texas, Arkansas, Tennessee, and Virginia, — except in Eastern Tennessee and Western Virginia, — and the President of the United States, in a proclamation duly made in conformity with an Act of Congress, has declared the same to exist throughout this territory, with the exceptions already named;

And whereas the extensive territory thus usurped by these pretended Governments and organized into a hostile confederation *belongs to the United States, as an inseparable part thereof, under the sanctions of the Constitution,* to be held in trust for the inhabitants in the present and future generations, and is so completely interlinked with the Union that it is forever dependent thereupon;

And whereas the Constitution, which is the supreme law of the land, cannot be displaced within this territory, but must ever continue the supreme law thereof, notwithstanding the doings of any pretended Governments, acting singly or in confederation, hostile to its supremacy: Therefore, —

1. *Resolved,* That any vote of secession, or other act, by a State hostile to the supremacy of the Constitution within its territory, *is inoperative and void against the Constitution,* and, when sustained by *force,* becomes a practical abdication by the State of all rights under the Constitution, while the treason it involves works instant forfeiture of all functions and powers essential to the continued existence of the State as a body politic; so that from such time forward the territory falls under the exclusive jurisdiction of Congress, as other territory, and the State becomes, according to the language of the law, *felo de se.*

2. That any combination of men assuming to act in the place of such State, and attempting to ensnare or coerce its inhabitants into a confederation hostile to the Union, is rebellious, treasonable, and destitute of all moral authority; and such combination is a usurpation incapable of constitutional existence and utterly lawless, *so that everything dependent upon it is without constitutional or legal support.*

3. That the termination of a State under the Constitution necessarily causes the termination of those peculiar local institutions which, having no origin in the Constitution, or in natural right independent of the Constitution, are upheld by the sole and exclusive authority of the State.

4. That Slavery, being a peculiar local institution, derived from local law, *without any origin in the Constitution or in natural right,* is upheld by the sole and exclusive authority of the State, and must therefore cease, legally and constitutionally, when the State on which it depends has lapsed; for the incident must follow the principal.[1]

5. That, in the exercise of exclusive jurisdiction over the territory once occupied by the States, it is the duty of Congress to see that the supremacy of the Constitution is maintained in its essential principles, so that everywhere in this extensive territory Slavery shall cease to exist in fact, as it has already ceased to exist in law or Constitution.

[1] This important principle was affirmed by Mr. Everett somewhat tardily; also by Dr. Brownson, at an earlier date. See, *post*, Appendix, pp. 307, 313.

6. That any recognition of Slavery in such territory, or surrender of slaves under pretended laws of such States, by an officer of the United States, civil or military, is a practical recognition of the pretended Governments, to the exclusion of the jurisdiction of Congress under the Constitution, and is in the nature of aid and comfort to the Rebellion that has been organized.

7. That any such recognition of Slavery, or surrender of pretended slaves, besides being a practical recognition of the pretended Governments, giving them aid and comfort, is a denial of the rights of persons who by the action of the States have become free, so that, under the Constitution, they cannot again be enslaved.

8. That allegiance from the inhabitant and protection from the Government are corresponding obligations, dependent upon each other; so that, while the allegiance of every inhabitant of this territory, without distinction of class or color, is due to the United States, and cannot in any way be defeated by the action of any pretended Government, or by any pretence of property or claim to service, the corresponding obligation of protection is at the same time due from the United States to every such inhabitant, without distinction of class or color; and it follows that inhabitants held as slaves, whose paramount allegiance is to the United States, may justly look to the National Government for protection.

9. That the duty cast upon Congress by the action of the States is enforced by the positive requirement of the Constitution, that "no State shall enter into any confederation," or, "without the consent of Congress,

keep troops or ships of war in time of peace," or "enter into any agreement or compact with another State," or "grant letters of marque and reprisal," or "coin money," or "emit bills of credit," or, "without the consent of the Congress, lay any imposts or duties on imports or exports," all of which have been done by these pretended Governments, and also by the positive injunction of the Constitution, addressed to the Nation, that "the United States shall guaranty to every State in this Union a republican form of government"; and that, in pursuance of this duty cast upon Congress, and further enjoined by the Constitution, *Congress will assume complete jurisdiction of such vacated territory, where such unconstitutional and illegal things have been attempted, and will proceed to establish therein republican forms of government under the Constitution,* and, in the execution of this trust, will provide carefully for the protection of all the inhabitants thereof, for the security of families, the organization of labor, the encouragement of industry, and the welfare of society, and will in every way discharge the duties of a just, merciful, and paternal Government.

When the reading was completed, Mr. Sumner asked that the resolutions be printed and laid upon the table, adding that at some future day he hoped to call them up for consideration. Then ensued a scene not inaptly called a "flurry," with regard to the disposition of the resolutions, — some wishing their reference to a committee, where they would be out of the way, and others wishing them laid on the table, so as to avoid present debate. Mr. Sumner made the latter motion, so as to keep them on the calendar of the Senate.

Mr. Davis, of Kentucky, moved at once their reference to the Committee on the Judiciary. But the motion to lay on the table had precedence. Mr. Sherman, of Ohio, said: "I do not think we ought to take time now in discussing this question." Mr. Anthony, of Rhode Island, said: "If the motion to lay on the table be lost, the motion to

refer will be debatable. I vote 'yea.'" The motion of Mr. Sumner prevailed, — yeas 21, nays 15.

Chief among the nays were the Democrats and the ordinary revilers of Antislavery movements; but the division did not indicate definite opinions on the resolutions. It was in no sense an adverse vote, although often cited as such by hostile partisans, which was the more curious as Mr. Sumner voted with the majority.

February 13th, Mr. Davis introduced a series of counter resolutions, eight in number, which were ordered to lie on the table and be printed. Their special object was the protection of loyal persons, so that no form of confiscation or forfeiture should reach them, — meaning, of course, protection against Emancipation, — "whilst inflicting on the guilty leaders condign and exemplary punishment, granting amnesty and oblivion to the comparatively innocent masses."

The difference developed here entered into subsequent debates. Mr. Sumner regarded Slavery as the great offender, besides being a constant wrong, and he wished it destroyed completely. Others sought to confine the sphere of Emancipation to the slaves of Rebels.

After certain Senatorial protests at a subsequent day, the question of Congressional power, presented by the resolutions, and involving Reconstruction, dropped out of sight, partly because the Proclamation of Emancipation provided a method against Slavery, and partly because Rebel resistance and the cloud which soon afterwards lowered upon our arms prevented Reconstruction from becoming what was called "a practical question," except to those who, anticipating the future, saw how much would be gained by a sure rule capable of immediate application as the national power prevailed.

A speech on this subject, especially vindicating the positions he had taken, was prepared by Mr. Sumner during this session; but the proper occasion for its delivery not occurring, it was handed over to the *Atlantic Monthly*, where it appeared as an article, October, 1863. Some of the points of the resolutions reappeared in the speech of the 19th May, on "Rights of Sovereignty and Rights of War";[1] also in the resolutions of June 2 and 6, 1862, relating to the Provisional Government of North Carolina.[2]

[1] *Post*, Vol. VII. p. 1.
[2] *Post*, Ibid., pp. 112, 119.

APPENDIX.

THESE Resolutions became the occasion of controversy, and occupied public attention. They have been considered the starting-point of Reconstruction, although the primary object on their introduction was to strike at Slavery. The principle here enunciated, that Slavery, being without support in the Constitution or in natural right, fell with the local governments on which it depended, seemed to Mr. Sumner impregnable, and he never ceased to regret that it was not authoritatively announced at an early day, believing that such a juridical truth adopted by the Government would have smoothed the way, while it hastened the great result. The essential difficulty proceeded from the indisposition to Emancipation; for here was only another form of the perpetual question, "Shall the slaves be set free?"

Towards the close of the war, Mr. Everett, in an eloquent speech at Faneuil Hall, gave his valuable authority in favor of this principle.

"I will add, that it is very doubtful whether any act of the Government of the United States was necessary to liberate the slaves in a State which is in rebellion. There is much reason for the opinion, that, by the simple act of levying war against the United States, the relation of Slavery was terminated, certainly so far as concerns the duty of the United States to recognize it or to refrain from interfering with it. Not being founded on the Law of Nature, and resting solely on positive local law, and that not of the United States, as soon as it becomes either the motive or pretext of an unjust war against the Union, an efficient instrument in the hands of the Rebels for carrying on the war, a source of military strength to the Rebellion and of danger to the Government at home and abroad, with the additional certainty, that, in any event but its abandonment, it will continue in all future time to work these mischiefs, who can suppose it is the duty of the United States to continue to recognize it? To maintain this would be a contradiction in terms. . . . . No such absurdity can be admitted; and any citizen of the United States, from the President down, who should by any overt act recognize the duty of a slave to obey a Rebel master in a hostile operation, would himself be giving aid and comfort to the enemy." [1]

[1] Duty of Supporting the Government; Address delivered in Faneuil Hall, 19th October, 1864: Orations and Speeches, Vol. IV pp. 718, 719.

Dr. Brownson's judgment was the same way, as appears in a citation on a subsequent page.

Besides the enunciation of this juridical truth, which, frankly adopted, must have put an end to Slavery legally and constitutionally in the Rebel States, the Resolutions further asserted the jurisdiction of Congress over these States, and the duty to establish republican government therein, — in other words, the plenary power and duty of Reconstruction. Although these were formally denied, yet the power was practically recognized and the duty was followed, but only after injurious delay and the conflict of debate.

The Resolutions were especially criticized, in the Senate and out of it, for what was termed the doctrine of "State Suicide," and "the lapse of States into Territories." They were described as proposing to reduce States into Territories. Naturally, the sentiment of State Rights was aroused.

SENATORS ADVERSE.

Mr. Willey, of Virginia, saw in them a scheme of "unconditional, immediate, and universal Emancipation"; and he added: —

"These consequences, in my judgment, involve the lives of thousands of my fellow-citizens, and the happiness of all the loyal people of all the border slaveholding States."

Then referring to the people of the South, he said: —

"Especially will they point to the sweeping resolutions of the great apostle of Abolition, the Senator from Massachusetts [Mr. Sumner], which by one dash of the pen deprive every Southern man of his slaves."

Then came the familiar parallel between Mr. Sumner and Jefferson Davis.

"Sir, a few weeks ago we expelled a Senator, because, on the 1st of March last, he wrote a letter to Jefferson Davis, commending to his regard a friend who had a valuable fire-arm to sell, and who visited the South mainly for the purpose of selling it. This was deemed evidence of disloyalty sufficient to warrant his ejection from the Senate. But what do we now see? What, for instance, is the proposition of the distinguished Senator from Massachusetts [Mr. Sumner]? It is, by one fell swoop of his pen, to blot ten or twelve States out of the Union forever to remit them back to a Territorial condition, and thus to involve our muniments of right, the titles to our estates, our franchises and municipal privileges, in a kind of hotch-pot, begetting and superinducing an inevitable confusion as inexplicable and dark as original Chaos."[1]

[1] Congressional Globe, 37th Cong. 2d Sess., March 20, 1862, pp. 1300, 1302.

Mr. Fessenden, in reply to Mr. Willey, emphatically disowned Mr. Sumner.

"Why, Sir, I do not hesitate to say here most distinctly, for myself, that I dissent entirely from the conclusions of the honorable Senator from Massachusetts, as stated in his resolutions. I do not look upon the States of this Union as gone and destroyed. . . . . It is enough to say, in this connection, that upon this particular point the opinions of the honorable Senator from Massachusetts are his own, for which he alone is responsible, and which he is undoubtedly well able to defend." [1]

On the next day Mr. Sherman followed in the same vein, — vindicating the Republican party, and especially disowning Mr. Sumner, which in the course of his speech he did twice. The first time he said : —

"The Senator from Massachusetts [Mr. SUMNER], as he has a perfect right to do, introduced a series of resolutions giving his idea about the effect of the war upon the political status of the States, and at once those resolutions are seized upon as the dogmas of the Republican party, and we are denounced for them, although candid men must know that they are but the emanation of a single individual, who has decided convictions on this subject, and who is far in advance of any political organization in this country."

Then, at the close of his speech, after saying that "we ought to oppose all useless and unconstitutional measures of legislation," he proceeded : —

"I, therefore, cannot help but say, that, while I respect the motives of the honorable Senator from Massachusetts, while I give him credit for consistency, ability, and a great deal of culture, and am always glad to hear him speak, yet I must confess, that, when I looked over his resolutions, they struck me with surprise and regret. They would revolutionize this Government. Sir, strike the States out of this system of Government, and your Government is lost and gone. I cannot conceive of the United States governing colonies and provinces containing millions upon millions of people, black and white. I do not think such a thing can exist. I do not believe it is in the power of Secession to bring us to such a state of things. I can draw no distinction between the resolutions of the Senator from Massachusetts and the doctrines that are proclaimed by Jefferson Davis. . . . . The doctrine of the Senator from Massachusetts is substantially an acknowledgment of the right of secession, of the right to secede. He, however, puts the States in the condition of abject Territories, to be governed by Congress. Jefferson Davis puts it in the power of the people of the States to govern the States themselves. As to which is the most dangerous or obnoxious doctrine I leave every man to determine." [2]

[1] Congressional Globe, 37th Cong. 2d Sess., April 1, 1862, p. 1472.
[2] Ibid., April 2, pp. 1493, 1495.

Not long afterwards, Mr. Dixon, of Connecticut, took up the same strain, characterizing the doctrine of the Resolutions as "fatal to our form of government, destructive of our Federal system, and utterly incompatible with a restoration of harmonious relations between the States in which rebellion now prevails and the United States"; and he condensed his judgment by calling the doctrine a "fatal heresy."[1]

Mr. Cowan, of Pennsylvania, some time later, spoke in harmony with the others.

"Now everybody knows that the honorable Senator from Massachusetts [Mr. SUMNER] has a scheme by which he proposes to turn all these States, in case they could be conquered, into Territories, that they shall be governed by the United States as Territories, and then, when their people come to their senses, — this is the language of the advocates of the scheme, — they are to be readmitted into the Union upon terms. Mr. President, I do not know anybody hardly who has not deprecated that as a most mischievous scheme to agitate just at present."[2]

Still later, Mr. Doolittle, of Wisconsin, in an elaborate speech, discussed Mr. Sumner's policy in the same spirit, saying that he had provided a way of disunion, — "which for brevity I will call, with no disrespect to my honorable friend from Massachusetts, THE SUMNER WAY FOR STATES TO GO OUT OF THE UNION, namely, by Act of Congress." And he attributed the same position to his colleague, Mr. Howe.

"What, in effect, do the Senator from Massachusetts and my colleague propose? To place outside of the Constitution, and to govern with unlimited power, eleven States and ten million people, nearly one third of all the States and people of the United States, without any representation."[3]

Mr. Howe replied to Mr. Doolittle, and, after referring to a resolution introduced by himself, declaring that "local governments ought to be provisionally organized forthwith for the people in each of the districts named in the preamble hereto,"[4] being the Rebel States, paid the following tribute to Mr. Sumner.

"As to the matter of fact, whether this resolution is the Lincoln and Johnson theory or the Sumner theory, the Senator from Massachusetts has not yet, I regret to say, indorsed that resolution, nor anything that I said in support of it; and I suppose the Senator from Massachusetts will claim the right, which, under the Constitution, as I understand it, belongs to every Senator on this floor, to speak for himself. If it should hereafter happen to

[1] Congressional Globe, 37th Cong. 2d Sess., June 25, 1862, p. 2925.
[2] Ibid., July 7, p. 3148.
[3] Ibid., 39th Cong. 1st Sess., January 17, 1866, pp. 268, 274.
[4] Ibid., January 10, p. 162.

receive his indorsement, it will be very gratifying to me. If I should find that I had given utterance on this floor to one sentiment which is approved by the Senator from Massachusetts, it will be only a small compensation for the great number of living sentiments to which I have listened from the Senator from Massachusetts, and which are bound to live long after my colleague and myself shall have passed from this stage of existence." [1]

Meanwhile, Mr. Sumner, acting upon the principles of his Resolutions, insisted upon colored suffrage in the Rebel States to be ordained by Congress, as will appear hereafter in these volumes. Senators who had originally opposed the power of Congress over these States now united in this requirement. Among those who still stood out was Mr. Doolittle, who, after alluding to President Lincoln's policy of Reconstruction, said : —

"Neither Mr. Lincoln, nor any member of his Cabinet, nor more than two Senators, I believe, in this body, the Senator from Massachusetts [Mr. SUMNER] and the Senator from Missouri [Mr. GRATZ BROWN], at that time advocated Reconstruction upon a basis including negro suffrage."

And Mr. Doolittle then proclaimed that more than twenty Republican Senators, who had stood with him, "advocating Reconstruction upon the white basis," now "go over to the side of the Senator from Massachusetts, and advocate his theory of Reconstruction upon the basis of negro suffrage and white disfranchisement." [2]

Then came another speech by the same Senator, in which he describes Mr. Sumner as adding to his demands only to find them adopted by Senators who had begun by opposing him.

"My friend from Massachusetts ought to feel a sense of profound satisfaction to see the progress they have made. I mean no discourtesy, when I say the ideas advanced by him that night, rejected then by a majority of four to one, rule the Senate now. Not only have they educated, they have Sumnerized the Senate." [3]

Mr. Hendricks, of Indiana, the Democratic leader of the Senate, differing widely from Mr. Sumner, in the debate on the Supplementary Reconstruction Bill, gave this testimony : —

"I said in the Senate, a year or two ago, that the course of things is this: the Senator from Massachusetts steps out boldly, declares his doctrine, and then he is approached, and finally he governs. Believing that he is in the right, — I concede that belief to him as a Senator, — his place in this body

[1] Congressional Globe, 39th Cong. 1st Sess., January 26, 1865, p. 441.
[2] Ibid., 39th Cong. 2d Sess., February 16, 1867, p. 1444.
[3] Ibid., 40th Cong. 2d Sess., February 24, 1868, p. 1378.

and before this country to-day is a very proud one. He was told somewhat sneeringly, two years ago, that among his party friends he stood alone; and to-day they all stand upon his position. This is a compliment and indorsement of sagacity and intelligence that but few men receive in the course of a public life." [1]

THE PRESS.

From the Senate the question was transferred to the great arena where pamphlets, reviews, and newspapers were the disputants. Here the opposition in the Senate found frequent expression. The Resolutions by their positive character offered a full front, and they were openly attacked.

Public meetings and committees also made them the subject of discussion, — especially a great meeting at Cooper Institute, New York, and a meeting of the German Republican Committee in New York, where they were fully sustained.[2]

The *North American Review*,[3] in an elaborate article, under the title of "Constitutional Law," afterwards published in a pamphlet with the author's name[4] on the title-page, treated the Resolutions with a severity which may be judged by the concluding words.

"It is to be hoped that disloyalty will not become more general by reason of threats of conquest, or by propositions that the United States shall become *administrator de bonis non* of the seceding States. One description of treason against the United States consists 'in adhering to their enemies, giving them aid and comfort.' Mr. Conway[5] and Mr. Sumner have given the 'aid and comfort.' Had they sent in their *adhesion* at the same time, they would have done the Union much less mischief."

Not content with this article, the learned author addressed the following letter to the *Boston Journal*.

"Unconstitutional Legislation.

"Dear Sir, — Will you permit me to say, that, the sooner the Republican party cuts itself loose from all unconstitutional projects (whether they relate to emancipation by proclamation, conquering States and holding them as Territories, confiscation without trial, or any other measure not warranted by the Constitution), the sooner it will begin to provide for its own salvation.

"Very truly yours,

"Joel Parker.

"Cambridge, May 5, 1862."

[1] Congressional Globe, 40th Cong. 2d Sess., January 30, 1868, p. 860.

[2] See, *post*, pp. 381, 376.

[3] April, 1862, Vol. XCIV. pp. 435 - 463.

[4] Hon. Joel Parker, Professor in the Law School, Cambridge, formerly Chief Justice of New Hampshire.

[5] Hon. Martin F. Conway, Representative in Congress from Kansas.

On the other side, Dr. Brownson, the able and indefatigable Catholic writer, sustained Mr. Sumner in a powerful article, entitled "State Rebellion, State Suicide."[1] A few sentences will show its character.

"The slave-owners, by their rebellion, have unquestionably forfeited their right under the Federal Constitution to be protected in their slave property, or, as to that matter, in any other species of property. If Slavery be ever again recognized as legal, therefore, the responsibility will attach not to Slave States only, but to the whole people of the United States, and we of the Free States will become, clearly and decidedly, *participes criminis.*"[2]

"We hold with Mr. Sumner in his noble Resolutions, creditable alike to him as a statesman and a lawyer, that the State by rebellion commits suicide, and lapses as a civil and political entity. All laws, customs, or usages, depending for their vitality, force, or vigor on the State, are rendered null and void by its secession, and are to be treated as *non avenues.* Slavery exists in any country only by municipal law, — in no country by the *jus gentium.* In our political system it exists by the local law, or by the law or usage of a particular State, in distinction from a law or usage of the United States."[3]

"The Rebellion, in a word, kills the whole State and everything dependent on it. Whether the State be revived and permitted to return to the Union depends entirely on the good pleasure of the Federal authority. It cannot be claimed as a right by the population on the territory of the defunct State. As they could not take the territory out of the Union, and as they, so long as they remain on it, are within the jurisdiction of the United States, the Federal Government has authority to govern them, and may govern them either as a Territory or as a conquered province."[4]

"The two most important measures ever introduced into the American Congress are, first, the resolutions of Mr. Sumner in the Senate, declaring that a State by rebellion commits suicide, and, second, General Ashley's bill in the House, from the Territorial Committee, providing for the government of the rebellious States as Territories. . . . . Their adoption would save constitutional government, and give new guaranties of man's capacity for freedom. But whether these measures be adopted or not, Mr. Sumner's resolutions will serve as a platform on which will take their stand all in the country worthy of consideration for their political sagacity, their wise statesmanship, their disinterestedness, and their nobility of sentiment."[5]

The newspapers were not behind the quarterlies in earnestness of difference; but citations from them will not add to the case already stated. An article in the *Temps*, an Imperialist organ at Paris, is interesting, as showing that the debate had crossed the ocean to France.

[1] Brownson's Quarterly Review, Third New York Series, April, 1862, Vol. III. pp. 194-220.

[2] Ibid., p. 199.

[3] Ibid., p. 200.

[4] Ibid., pp. 201, 202.

[5] Ibid., pp. 217, 218.

"The confidence of the nation possesses the Washington Cabinet, too often accessible to incertitude and discouragements, and its members seem about to rally to the system presented by Mr. Sumner. It is known that the Constitution gives to Congress the absolute power over what is called the Territories, — that is to say, the territorial portions not yet incorporated politically into the Union. . . . . The practical consequence which Mr. Sumner draws from that can be divined. He proposes to consider the Rebel States as simple Territories, which necessarily after victory will return one after another to their vitality. Then, according to the manner in which the Washington Government and Congress shall pronounce definitively on this supreme question, can admittance into the Union be refused to States which do not abolish Slavery or regulate it in a sense favorable to Abolition." [1]

CORRESPONDENCE.

THE response by letters showed that Senatorial protest and newspaper criticism did not prevent the acceptance of the Resolutions by earnest, thoughtful people, anxious for decisive measures and a true preparation for the future. Here was a plan of Reconstruction without Slavery, and this was a wide-spread longing of hearts.

Hon. John Jay, afterwards Minister at Vienna, wrote from New York : —

"There is no question about the fact that Slavery in the Rebel States has ceased to exist, within the meaning and under the protection of the Constitution.

"I have thought somewhat on the matter, and have just completed an argument on it, which I proposed to include in my lecture before the Washington Association. The Southern States have ceased to be States of the Union; their soil has become national territory; and the slaves, in the eyes of the Constitution, are freemen. I wish your resolutions had been referred to some committee from whom we could have had a careful report in their favor, even though it were a minority report, to get the argument before the country."

Charles T. Rodgers, President of the Young Men's Republican Union, wrote from New York : —

"I have just read the preamble and resolutions offered by you in the Senate, in which you define the position and status of the revolted States, and of persons held to service under the laws thereof.

"I cannot refrain from expressing to you, personally, my pleasure at the fact that the true doctrine on this subject has been so clearly laid down. I am sure that your theory is the true one, and, in fact, the only one this

[1] Le Temps, 5 Mars, 1862.

Government can consistently follow, and the only one which seems to offer a plain path out of the maze of conflicting legal and constitutional points in which so many of our public men seem to have become entangled. The States, by seceding, have committed suicide. The slaves therein are *de facto* free. Stick to that, and you will come out all right."

Hon. Charles A. Dana, the accomplished journalist, afterwards Assistant Secretary of War, wrote : —

"I fully appreciate the difficulty of settling the South after it is conquered. I don't see how your plan can be avoided; *bon gré, mal gré*, it is what we all must come to."

Park Benjamin, writer and poet, who had not formerly sympathized with Mr. Sumner politically, wrote from New York : —

"Your Territorial plan is the only right and just one, let the short-sighted geese hiss at it as they may."

William Herries, journalist, wrote from New York : —

"It was my pleasure to-night to be present at the meeting of the German Republican Central Committee, and it was truly refreshing to witness the enthusiasm manifested in behalf of those lofty sentiments embraced in your Rebel Territory Bill. A Memorial is now in course of preparation for you on the subject."

Hon. J. Y. Smith, of the *Wisconsin Argus*, wrote from Madison : —

"Early in the Rebellion I took the same view of the effect of Secession upon the Rebel States as is set forth in your Resolutions, — suggested it to our Wisconsin Senators, and wrote several articles in support of it, but could find very few public journals or public men to agree with me. When your resolutions on that subject appeared, I hailed them with joy, and have been exerting the little influence I have to instil the principle into the public mind. It is the true theory, and I wonder why any friend of the country can object to it. By their rebellion they have tumbled Slavery right into our bag, and if we shake it out, our life will go for its life."

Thomas Garrett, a Quaker Abolitionist, wrote from Wilmington, Delaware : —

"I yesterday read the resolutions thou offeredst on the 11th of this month, and think the view thou hast taken is correct: that any vote of secession, or other act by which a State may undertake to put an end to the supremacy of the Constitution within its territory, is inoperative and void against the Constitution, and, when sustained by force, is practical abdication by the State of all rights under the Constitution; and every such State ought to be expunged and revert back into a Territory, and begin anew. I thought, six months since, that ere this Slavery would have been abolished by the War Power in all the seceded States, but at present I have very little hope

of it. It seems to me incredible that the President and Cabinet should have so much more sympathy for the Rebels than they have for the loyal North."

W. G. Snethen, lawyer, earnest against Slavery, wrote from Baltimore: —

"Your admirable resolutions respecting the status of the Rebel region, in which the Rebellion has killed Slavery, did my heart good, especially as indicating an Administration policy. I hope and pray that this doctrine speaks the mind of Lincoln, and that he will not flinch from its execution with the whole power of the Government. . . . . Oh that Congress may adopt your set just as they came from your mighty pen, and then follow them up by legislation to give them active life!"

Edward P. Brownson communicated the opinion of his father, Orestes A. Brownson, in a letter from Elizabeth, New Jersey.

"I suppose my father has long since told you of his delight, when you introduced your Resolutions into the Senate. The joy with which he read them, and the attention he has given them, you will find very clearly expressed in the deep and careful study he has given the subject, evident in his article on *State Rebellion, State Suicide;* and he would much rather see them pass than win a victory in the field."

Mrs. Maria Weston Chapman, the devoted Abolitionist, and among the earliest in the warfare, wrote from Boston: —

"Thanks a thousand-fold for the eleventh volume Pacific Railroad Survey. Your Resolutions are *the great Pacific Road to Freedom,* — made possible by the War Power though they be. I thank you a million-fold. To say so is no exaggeration, since all done in this behalf is done for all men and all time; and from the hour that Garrison struck the first blow, I have ever felt that the highest numbers were needed fitly to express human gratitude for services rendered to human nature."

Jabez C. Woodman, an able lawyer, wrote from Portland, Maine: —

"You are not without some judicial authority. As much as ten months ago I heard Judge Ware[1] express the opinion that the Union troops would prevail. He then said he was in favor of coercion, — that he would subjugate the Rebel States, and, taking them at their word, he would not acknowledge them at once as States, but would govern them as conquered provinces, till they were fit to govern themselves."

Elizur Wright, the early and constant Abolitionist, wrote from Boston: —

[1] For a long time the able and learned Judge of the District Court of the United States in Maine.

"Your Resolutions are *the very thing*. Had they been passed at the extra session, the war would have been over before now. They, or something to the same effect, must be passed before spring opens, or we are lost. Victories, without this *law* of the *conquest*, cannot save us. Quite the reverse. I beg you to press the resolutions with any amount of animosity or violence, and to know that all that is alive at the North will sustain you.

"There are thousands ready to see the present Government blotted out in blood and chaos rather than see the old curse reinstated. On us, not on our children! There has been fooling enough. Heaven bless you!"

Rev. George C. Beckwith, Secretary of the American Peace Society, wrote from Boston: —

"I had some difficulty for a time about your *Territorial* views; but I am coming fully to the conclusion that we must deal with all rebellion in some such way, before the South can be brought to any terms. We must have and keep them all in our grasp, until they prove themselves, by their good behavior, fit to come again into the Union."

Charles Husband, an intelligent citizen, whose correspondence was always valuable, wrote from Taunton, Massachusetts: —

"I have to thank you for a copy of your Resolutions, and perhaps you will not deem me intrusive, if I wish you a hearty God-speed in the work you have undertaken, — a work the successful accomplishment of which is large enough to fill the measure of the highest ambition, — a work which will redeem the nation from its low estate, which asserts the nation's sovereignty and self-existence, instead of 'borrowing leave to be,' — which demands for the nation the paramount allegiance of every inhabitant of its territory, and sweeps away every institution which interposes itself between the nation and that allegiance, — which calls the Government from being the minister of oppression and the mere dispenser of patronage, to take upon itself the high purposes and duties for which 'governments are instituted among men,' — which transmutes four millions of chattels into men.

"Allow me to suggest (although it has not, probably, escaped your notice), that the constitutional requirement, that every legislative, executive, and judicial officer in the States shall be sworn to the support of the Constitution of the United States, leaves the whole of the Rebel territory without a civil officer whom the Government can recognize, as every such pretended officer is just as much a usurper in the eye of the Constitution as Jefferson Davis himself."

Henry Hoyt, publisher and bookseller, wrote from Boston: —

"I cannot sleep another night till I have thanked you from the bottom of my heart for your bill resolving Rebeldom into Territorial relations again. Of all measures ever introduced into Congress, nothing so completely meets the case of the present exigency of our country's history, and *nothing but this* can make the confederacy of the whole land stand in

safety a single year. We may continue to win battles, but, so long as the ruins of Slavery exist in the body politic, we shall stand on a volcano."

But the most important commentary on the Resolutions is found in the measures of Reconstruction subsequently adopted, all of which stand on the power of Congress over the Rebel States, which they positively assert, including especially the power and duty to guaranty a republican form of government.

The Report of the Joint Committee on Reconstruction, drawn up by its Chairman, Mr. Fessenden, asserted that the Rebel States "having voluntarily renounced the right to representation, and disqualified themselves by crime from participating in the Government, the burden now rests upon them, before claiming to be reinstated in their former condition, to show that they are qualified to resume Federal relations." It then laid down the rule : —

"Having, by this treasonable withdrawal from Congress, and by flagrant rebellion and war, forfeited all civil and political rights and privileges under the Federal Constitution, they can only be restored thereto by the permission and authority of that constitutional power against which they rebelled, and by which they were subdued." [1]

Here was the power of Congress asserted, — but very tardily, and after original denial.

A calm observer has recently recorded his regret that the Resolutions were not adopted at once, and consistently acted upon. After saying that "the mover was overwhelmed with a tornado of denunciation and abuse," and that the opposition "rendered any satisfactory reconstruction as nearly impracticable as can well be imagined," the writer proceeds : —

"Time has fully vindicated the wisdom of Mr. Sumner's course, and many of the Senators against the measure now admit their mistake, — while every man who comes here from the South says that their present miserable condition grows out of that great error.

"To the Democratic party the rejection of the Resolutions was a God-send. It made the continued existence of the Democratic party possible." [2]

Such is the first chapter of Reconstruction.

[1] Senate Reports, 39th Cong. 1st Sess., No. 112, June 8, 1866, pp. 13, 14.
[2] Hon. Amasa Walker, in the Chicago Advance, February 2, 1871.

TREASURY NOTES A LEGAL TENDER.

SPEECH IN THE SENATE, ON THE CLAUSE MAKING TREASURY NOTES A LEGAL TENDER, FEBRUARY 13, 1862.

FEBRUARY 13th, the Senate having under consideration a bill from the House of Representatives to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States, Mr. Collamer, of Vermont, moved to strike out the following words : —

"And such notes herein authorized, and the notes authorized by the Act of July 17, 1861, shall be receivable in payment of all public dues and demands of every description, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin, *and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except interest as aforesaid.*"

Mr. Collamer stated that some desired him to try the sense of the Senate on the question of private debts, but he preferred the above amendment, "that these notes shall not be tenderable upon any debts due by the Government or by individuals." On this proposition he had already made an elaborate speech.

Mr. Fessenden also spoke elaborately upon the whole bill ; but he characterized the legal tender clause as "the main question." Here he said : —

"The question, then, is, Does the necessity exist? . . . . If the necessity exists, I have no hesitation upon the subject, and shall have none. If there is nothing left for us to do but that, and that will effect the object, I am perfectly willing to do that."

Mr. Sumner spoke last in the debate, and at least one Senator acknowledged that on the question of constitutional power he had been changed by this speech. The vote was then taken on the amendment, and resulted, yeas 17, nays 22.

So the motion to strike out the legal tender clause was rejected.

Mr. Doolittle moved an amendment so as to make the notes "a legal tender in payment of all public debts, and all private debts hereafter contracted within the United States," which was rejected without a division.

Mr. King also moved a comprehensive amendment, which likewise struck out the legal tender clause; but it was rejected without a division.

The bill was then passed, yeas 30, nays 7.

MR. PRESIDENT, — I am sorry to ask the attention of the Senate at this late hour; but the importance of the question must be my apology.

In what I say I shall confine myself exclusively to a single feature of the present bill. Others may regret that the exigencies of the country were not promptly met by taxation, — or that at the beginning a different system was not organized by the Treasury, through which the national securities might have found a readier market, — or that the national credit was not sustained, at the period of bank suspension, by the resolute redemption of the Government securities in coin at any present sacrifice. But it is useless to discuss these questions. The time for such discussion has passed. The Tax Bill is not yet matured. The system adopted by the Treasury cannot be changed at once, if it were desirable. It is too late to organize the redemption of the national securities in coin on the daily application of holders. Meanwhile the exigencies of Government have become imperative. Money must be had.

And we are told that the credit of Government can be saved only by an act that seems like a forfeiture of credit. Paper promises are to be made a legal tender, like gold and silver; and this provision is to be ingrafted on the present bill authorizing the issue of Treasury notes to the amount of $150,000,000.

All confess that they vote for this proposition with reluctance, while to many it seems positively unconstitutional. Of course, if unconstitutional, there is an end of it, and all discussion of its character is superfluous. I am compelled by candor to declare that the doubts which perplex me do not proceed from the Constitution. If the question of constitutionality were in all respects novel, or, as lawyers phrase it, of first impression, then I might join with friends in their doubts. But it seems to me that the constitutional power of Congress to make Treasury notes a legal tender was settled as long ago as when it was settled that Congress might authorize the issue of Treasury notes; for from time immemorial the two have gone together, one as incident of the other, and, unless expressly severed, they naturally go together.

It is true that in the Constitution there are no words expressly conferring upon Congress the power to make Treasury notes a legal tender; but there are no words expressly conferring upon Congress the power to issue Treasury notes. If we consult the text, we find it as silent with regard to one as with regard to the other. There is no silence with regard to the States, which are expressly prohibited to "emit bills of credit," or "make anything but gold and silver coin a tender in payment of debts." Treasury notes are "bills of credit"; and this prohibition is imperative on the States. The inference is just, that this prohibition, expressly addressed to the States, was not intended to embrace Congress indirectly, as it obviously does not embrace it directly. The presence of the prohibition, however, shows that the subject was in the minds of the framers of the Constitution. If they failed to extend it still further,

it is reasonable to conclude that they left the whole subject in all its bearings to the sound discretion of Congress, under the ample powers intrusted to it.

The stress so constantly put upon the prohibitions addressed to the States will justify me in introducing the opinion of Mr. Justice Story, in his Commentaries.

"It is manifest that all these prohibitory clauses, as to coining money, emitting bills of credit, and tendering anything but gold and silver in payment of debts, are founded upon the same general policy, and result from the same general considerations. *The policy is, to provide a fixed and uniform value throughout the United States*, by which commercial and other dealings of the citizens, as well as the moneyed transactions of the Government, might be regulated."[1]

Plainly, no inference adverse to the powers of the National Government can be drawn from these prohibitory clauses; for, whatever may be these powers, there will be a fixed and uniform value throughout the United States.

As we proceed, the case becomes more clear. The States are prohibited to issue "bills of credit"; but there is no such prohibition on the National Government, which may do in the premises what the States cannot do. The failure to prohibit is equivalent to a recognition of the power. In other words, the National Government may issue "bills of credit," which have been characterized by no less a person than Chief-Justice Marshall, in pronouncing the opinion of the Supreme Court, when he said: "To 'emit bills of credit' conveys to the mind the idea of issuing paper intended to circulate through the community for its ordinary

[1] Commentaries on the Constitution, Vol. II. § 1372.

purposes *as money,* which paper is redeemable at a future day." And then again the learned Chief Justice said: "The term has acquired an appropriate meaning; and 'bills of credit' signify *a paper medium,* intended to circulate between individuals, and between Government and individuals, for the ordinary purposes of society."[1] This "money" and "paper medium" the States are prohibited from emitting; but there is no such prohibition on the National Government,— as there is not a single word to prohibit the National Government from determining what shall be a legal tender.

From the proceedings of the National Convention it appears that a clause in the first draught of the Constitution empowering Congress to "emit bills on the credit of the United States" was after discussion struck out. In the debate on this clause, Mr. Madison asked: "Will it not be sufficient to prohibit the making them *a tender?* This will remove the temptation to emit them with unjust views." Mr. Mason said, "Though he had a mortal hatred to paper money, yet, as he could not foresee all emergencies, he was unwilling to tie the hands of the [National] Legislature. He observed, that the late war could not have been carried on, had such a prohibition existed." Mr. Mercer was "opposed to a prohibition of it altogether. It will stamp suspicion on the Government to deny it a discretion on this point." Mr. Butler remarked, that "paper was a legal tender in no country in Europe. He was urgent for disarming the Government of such a power." Mr. Mason was "still averse to tying the hands of the Legislature *altogether.* If there was no example in Europe, as just remarked,

[1] Craig et al. *v.* The State of Missouri, 4 Peters, R., 432.

it might be observed, on the other side, that there was none in which the Government was restrained on this head." Mr. Gorham was "for striking out, without inserting any prohibition." And this view finally prevailed.[1] Thus it appears that the suggestion was made to prohibit the making of bills a tender; but this suggestion was not acted on, and no such prohibition was ever moved. It is evident that the Convention was not prepared for a measure so positive. Less still was it prepared for a prohibition to emit bills. Such is the record. While all words expressly authorizing bills were struck out, nothing was introduced in restriction of the powers of Congress on this subject.

Thus was the whole question practically settled; and the usage of the Government has been in harmony with this settlement. Treasury notes were issued during the war of 1812, and in the monetary crisis of 1837, also during the war with Mexico, and constantly since, so that the power to issue them cannot be drawn into doubt. If there was any doubt originally, unquestioned practice, sanctioned by successive Congresses, has completely removed it. I do not stop to consider whether the power is derived primarily from the power "to borrow money," or the power "to regulate commerce," or from the unenumerated powers. It is sufficient that the power exists.

But I see not how to escape the conclusion, that, if Congress is empowered to issue Treasury notes, it may affix to these notes such character as shall seem safe and proper, declaring the conditions of their circulation and the dues for which they shall be received. Grant the first power, and the rest must follow. Careful you

[1] Madison, Debates in the Federal Convention, August 16, 1787.

will be in the exercise of this power, but, if you choose to take the responsibility, I see no check in the Constitution.

The history of our country furnishes testimony, which has been gathered with extraordinary minuteness in an elaborate opinion by Mr. Justice Story.[1] I follow mainly his authority, when I set it forth.

It appears that the phrase "bills of credit" was familiarly used for bank-notes as early as 1683 in England, and also as early as 1714 in New England. But the first issue in America was in 1690, by the Colony of Massachusetts, and the occasion — identical with the present — was to pay soldiers, returning unexpectedly from an unsuccessful expedition against Canada. These notes were from two shillings to ten pounds, and were receivable for dues at the Treasury. Their form was as follows: "This indented bill of ten shillings, due from the Massachusetts Colony to the possessor, shall be in value equal to money, and shall be accordingly accepted by the Treasurer, and Receivers subordinate to him, in all public payments, and for any stock at any time in the Treasury." Here followed the date, and the signatures of the Committee authorized to issue these notes.[2] Such was their depreciation, that these notes could not command money or commodities at money price, although the historian, Hutchinson, who has recorded these interesting facts, does not hesitate to say that they had better credit than King James's leather money in Ireland only a short time before.[3] Being of

[1] Briscoe *v.* The Bank of the Commonwealth of Kentucky, 11 Peters, R., 257. Story's Commentaries on the Constitution, Vol. II. § 1362–1367, and note.

[2] Collections Mass. Hist. Soc., 2d Ser. Vol. III. p. 261.

[3] History of Massachusetts, Vol. I. p. 402.

small amount, they were soon absorbed in the payment of taxes. But this example did not stand alone.

The facility with which paper money is created renders it difficult to withstand the temptation, unless a Government is under the restraint of correct principles of finance, which at that early day were utterly unknown. An excuse for Massachusetts may be found in the general poverty at that time, the lack of precious metals, and the distance from marts of trade. In 1702 there was another issue of bills of credit, for £15,000, which, by a subsequent Act, in 1712, were made a tender for private debts. Under the continued cry of scarcity of money, bills of credit were again issued in 1716, to the amount of £150,000, to be lent, for a limited period, to inhabitants, whose lands were mortgaged as security. These were not made a tender; but they were receivable at the Treasury in discharge of taxes, and also of mortgage debts. Other bills were afterwards issued, so that paper money was common. The historian who has exposed this condition of things does not hesitate to liken this currency to pretended values stamped on leather or paper, and declared to be receivable in payment of taxes and in discharge of private debts. The natural consequence was a fatal depreciation, so that an ounce of silver, worth in 1702 six shillings and eight pence, in 1749 was equivalent to fifty shillings of this paper currency.[1] At the present moment I do not seek to exhibit the character of this currency, but simply the original association between bills of credit and the idea of a tender.

But Massachusetts was not alone. The neighboring colony of Rhode Island, as early as 1710, followed

[1] Hutchinson, History of Massachusetts, Vol. I. p. 403, note.

her example, and in 1720 made her bills a tender in payment of all debts, except certain debts specified. Connecticut issued bills at different periods, beginning with 1709, some of which were made a tender, and some not. New York began in the same year, substantially following Massachusetts; and her bills were generally made a tender. In 1722 Pennsylvania issued bills, secured on mortgage, and made a tender. In 1739 Delaware did likewise, making her bills a tender. So also did Maryland, in 1733, to the amount of £90,000; but other bills were issued by Maryland, in 1769, which were not made a tender.

The example of Virginia is more conspicuous, although not so early in time. The very term, "Treasury notes," now used as the equivalent of "bills of credit," first appears in her colonial legislation, when, in 1755, they were made a tender in payment of debts.[1] There were successive emissions in 1769, 1771, and 1773, which were not made a tender, — and then in 1778, and at other times afterwards, which were made a tender. That these "Treasury notes" were deemed "bills of credit" is demonstrated by the legislation of the State, especially by the Act of May, 1780, which, after reciting that the exigencies of the war require the further emission of paper money, authorizes new "Treasury notes," and proceeds to punish with death any person who shall forge "any bill of credit *or* Treasury note to be issued by virtue of this Act."[2]

I find that North Carolina, as early as 1748, sent forth bills of credit which were made a tender, and many subsequent emissions were authorized. South Carolina began in 1703; but these bills, bearing in-

[1] Hening, Statutes at Large, Vol. VI. p. 467.
[2] Ibid., Vol. X. pp. 279, 286.

terest at twelve per cent, do not seem to have been made a tender. Others issued by this colony, at different times afterwards, were made a tender. In 1760 Georgia authorized bills of credit on interest, and secured by mortgage of the property of the receivers, which were made a tender.

The extensive employment of paper money in New England aroused the jealousy of the Imperial Parliament, which, by the Act of 25th June, 1751,[1] expressly forbade the issue of any "paper bills, or bills of credit," except for certain specific purposes, or upon certain specified emergencies. The Act constantly speaks of these two as equivalent expressions, thus seeming to show that "bills of credit," in their true meaning, were what is familiarly called "paper money," with the incidents of such money. But the Act proceeds to limit these incidents by declaring expressly that "no paper currency, or bills of credit," issued under it, shall be a tender in payment of any private debts or contracts whatsoever, with a proviso that nothing therein contained should make any bills then subsisting a tender. That Parliament should deem it necessary, by special enactment, to take from bills of credit the character of a tender, attests the customary association between these two ideas.

During the Revolutionary War, under the exigencies of that time, with a country without resources and a treasury without money, bills of credit, known as Continental money, were issued by Congress. But, while receivable in discharge of taxes and other public dues, they were not made a tender by Congress, although the States were recommended to make them such.

[1] 24 George II, Chap. 53.

Mr. Collamer. And did make them so.

Mr. Sumner. At the adoption of the National Constitution, the people, to their wide-spread cost, had become familiar with bills of credit and their incidents, while all conversant with Colonial history must have known the part which bills of credit played for nearly a century, not only as a help to currency, but as a tender, constituting paper money. And yet, with all this ample knowledge, — present certainly to the framers of the Constitution, if not to the people, — no express words on this subject were introduced into the text of the Constitution, except with regard to the States. The conclusion from this silence, under all the circumstances, is strong, if not irresistible.

But the omission of the Constitution with regard to bills of credit was practically supplied by Congress, which has not hesitated to assume the existence of the power. If the Constitution failed to speak, Congress has not failed; and the exercise of this power cannot now be questioned, without unsettling our whole financial system. But we have seen that throughout our Colonial history the tender was a constant, though not inseparable, incident of the bill of credit, — that, indeed, it was so much part of the bill of credit that the Imperial Parliament positively interfered to separate the two, and, while sanctioning the bill of credit, forbade the tender. And now, if this historical review is properly apprehended, if it is not entirely out of place, it must conduct to the conclusion, that, whatever may be the present question of policy, the power to make Treasury notes a tender has precisely the same origin in the Constitution with the power to create Treasury notes. It is true that you may exercise one power and decline

the other; but if you assume the power to issue bills of credit, I am at a loss to understand how you can deny the power to make them a tender. The two spring from the same fountain. You may refuse to exercise one or both; but you cannot insist upon one, under the Constitution, and reject the other.

Assuming the constitutionality of this proposition, or rather declining to admit the satisfactory force of the constitutional arguments against it, I am brought to a question which has, for me, more of difficulty and doubt: I mean the policy of exercising the power at this moment. It is not too much to say that this question concerns the national character, as well as the national welfare, while intelligent and patriotic men differ earnestly with regard to it. Decide it as we may, we cannot escape anxiety on the subject. Take which way we will, we cannot escape the just sense of responsibility. Seeking the truth only, and jealous of that good name which is to a Government one of its best possessions, I shall consider the question frankly; nor shall I disguise any of the difficulties which it presents, whether from principle or from experience. This is not the time for concealment, and I insist, that, if the power is exercised, its true character shall be understood. I invoke, also, the examples of history, to make us pause; but it will be my duty to show that there are other examples calculated to sustain the Government in the policy it now so urgently recommends.

If the Treasury notes of the United States were at this moment convertible into coin, there would be no occasion to declare them a tender; for they would be everywhere, at least in our own country, as good as

coin. But the suspension of the banks was followed by suspension of the Treasury, and its notes are now inconvertible paper, which it is proposed to sustain artificially by declaring them a tender. If this proposition be adopted, the Treasury will be enabled to substitute bits of engraved paper for money. Of course, such a proposition, on its face, is obnoxious to objections that make upon me an impression not to be disguised.

Looking at the history of paper money, especially in our own country, we find no encouragement. Its evils were vividly portrayed by the "Federalist,"[1] and have been powerfully presented in this debate by the Senator from Vermont [Mr. COLLAMER]. Congress, during the Revolution, began, as early as 1775, with bills to the amount of $3,000,000, on their face declaring the bearer entitled to receive the sum specified in "Spanish milled dollars, or the value thereof in gold or silver," according to a certain resolution of Congress. The bills were receivable for taxes, and the thirteen colonies were pledged for their redemption. Other emissions followed, and, as their credit began to fail, Congress went so far as to declare that whoever refused to receive this paper in payment should "be deemed, published, and treated as an enemy of his country."[2] As the paper continued to depreciate, Congress became more violent in its support, and even ventured to recommend it as of peculiar value. "Let it be remembered," said Congress, "that paper money is the only kind of money which cannot 'make unto itself wings and fly away.'"[3] The sum-total of these bills at last reached upwards of three hundred millions,

[1] No. XLIV., by Mr. Madison.

[2] Journals of Congress, Vol. II. p. 21.

[3] Circular Letter from Congress to their Constituents, September 13, 1779: Journals of Congress, Vol. V. p. 347.

which in 1780 became so utterly worthless in the hands of their possessors that they ceased to circulate, and have ever since been treated only as curiosities, without positive value. No serious proposition for their redemption has ever been made.

The French *assignats*, amounting to the enormous sum-total of *nine thousand million dollars*,[1] issued during the fiery excitements of the Great Revolution, shared the fortunes of American Continental money, passing into the limbo of "things transitory and vain." Perhaps there is not a country on the European continent, which, during the fearful wars that followed, did not encounter the same experience. I have heard it said that old soldiers in Denmark lighted their pipes with paper money, which had become to them only the record of a broken promise.

Power of all kinds is liable to abuse, and experience shows that the power to issue inconvertible paper is no exception to this prevailing law. The issue may be moderate at first, and sustained by plausible reasons, but it breaks soon into excess. Of course, actual value, or its equivalent, is the life of money, giving to it a circulating quality; and when money begins to be suspected, it loses its circulating quality. But inconvertible paper, even when made a tender, has no actual value, and circulates only because Government commands its circulation. It has no present worth beyond the engraving; therefore all ordinary checks to undue issue of money are wanting. Nothing exists to prevent excess and consequent depreciation; and this danger

[1] 45,578,000,000 francs. Say, J. B., Cours Complet d'Économie Politique Pratique, Part. III. ch. 16. Nervo, le Baron de, Les Finances Françaises sous l'Ancienne Monarchie, la République, le Consulat et l'Empire, Tom. II. p. 280.

is verified by history. I refer to it now that I may not seem indifferent to any of the perplexities which surround us.

In some countries a legal tender is gold and silver; in others it is gold alone. In England, since 1816, gold, and not silver, has been the tender for sums of forty shillings and upwards; and since 1833 the notes of the Bank have been a tender for sums over five pounds, everywhere except at the Bank itself and its branches. But it is to be borne in mind that both these metals have positive value in the market equivalent to that of coin; so that coin is value itself. But convertible paper is not value itself; it is only the representative of value; while it is doubtful if inconvertible paper can be called the representative of anything in particular. These considerations are not decisive of the policy now proposed, but they justly incline us to a prudent hesitation.

If we are not deterred by the bad examples of history, or by the acknowledged danger of excess and consequent depreciation, — if we are willing to take the chance of seeing Treasury notes in the same list with Continental money and French *assignats,* and of having returned soldiers in old age light their pipes with the worthless paper, — if these suggestions are put aside as exaggerated or irrelevant, I ask you not to forget that a constant aim of good government is to secure the immediate convertibility of paper into coin. But, instead of securing such immediate convertibility, or taking any steps towards it, you will for the present renounce it.

Pardon my frankness, Sir, if I declare that the present proposition, when examined carefully, seems too much like bad faith. I say it *seems:* I would not speak too strongly. Is there not bad faith towards creditors, who

are compelled to receive what is due in a depreciated currency? Is there not bad faith towards all abroad, who, putting trust in our integrity, national and personal, have sent their money to this country in gold or its equivalent? And just in proportion as this is so, you cannot doubt that we shall suffer alike in character and resources too; for what resource is greater to a nation or to an individual than a character for integrity? The present proposition must be followed soon by others, — even to the extent of $1,000,000,000. But where shall this vast amount be obtained, and at what cost, when it is seen that we have already undertaken to authorize inconvertible paper as a tender? Credit is volatile and sensitive, and will not yield to force. Do you propose the right way to win the delicate possession? It will not come to you from abroad, where money usually abounds. Will it salute you here at home? And is it good economy to obtain the amount you seek by a policy which will create a disturbing impediment to all your efforts for the larger amounts soon to be required? I put these questions without answering them. It is sufficient for me that I open the difficulties before us; and here I follow the Senator from Maine [Mr. FESSENDEN], Chairman of the Committee on Finance, who commenced this debate.

In courts of law, experts are summoned to testify on questions of science or art within their special knowledge. If, on this occasion, experts in finance or currency were summoned, I do not know that we should be much enlightened; for, according to my observation, there are such differences among them, and, as the Senator from Maine [Mr. FESSENDEN] has pleasantly told us, such differences even in the same person, one day

and the day after, that it is difficult to place reliance in their counsels. Some tell us that making Treasury notes a tender will be most beneficent; others insist that it will be dishonorable and pernicious. On each side strong words are employed. Which shall we follow?

Crossing the sea, we find similar differences, not, of course, with regard to the present proposition, which is not yet known there, but with regard to the principles entering into this debate. In England the general subject has occupied much attention. As late as 1857 it was brought before a distinguished Parliamentary Committee, and their Report is remarkable for the testimony of numerous witnesses whose experience and knowledge give authority to their opinions. The Report is a financial monument. But among these witnesses are some who were little disturbed by an inconvertible currency, although the weight of testimony was the other way.

Nobody was more positive than Nathaniel Alexander, Esq., head of the firm of Alexander & Co., India merchants. His attention being called to the proper means against the effects of panic on the Bank of England, he proposed, as an assistance to the Bank, another currency, inconvertible, and a tender for Government dues, under Act of Parliament. From its inconvertible character, such a currency, he said, would not be reached by panic, and would therefore contribute to the security of the Bank.[1] This testimony seems to maintain the principle of the present proposition; and I quote it, as showing that the proposition is not entirely without practical authority.

John Twells, Esq., a London banker for upwards of fifty years, also testified in favor of an inconvertible

[1] Report on Bank Acts, 1857, Part I., Q. 4270.

note under sanction of Government, and a legal tender. Here are his answers to two questions.

"What do you conceive to be the advantage of an inconvertible note of that kind over a convertible note payable to bearer on demand? — It would prevent a drain of bullion, when it is required for foreign trade; and it would give us, what is so very essential, a domestic currency which is not influenced by any foreign transactions whatever. If France or America wants a quantity of gold, it ought not to interfere with our domestic currency. Our merchants and all our trade surely should not suffer because America wants gold.

"Do you think that that currency would run the risk of ever being depreciated in value, — that is to say, that inconvertible five pound notes would not exchange for five sovereigns? — I do not know, as compared with sovereigns; that, I think, is of no consequence in the world. We want it for our internal commerce, and we want it to pay Government their taxes."[1]

Two other questions and answers may be given.

"You have been asked about the French assignats. Is not the difference between the currency which you recommend and the assignats just this, that the Government are bound to take back whatever they issue? — Precisely; and that makes all the difference.

"And, with the French assignats, they refused to take back what they had issued? — Yes. A corrupt Government may commit such an excess as they did in France, where the amount of their assignats was, if I remember right, about £300,000,000 sterling. They could not receive them back; they could not get their taxation, on account of the revolution which was going on; therefore the assignats fell to nothing."[2]

[1] Report on Bank Acts, 1857, Part I., Q. 4634, 4635.
[2] Ibid., Q. 4764, 4765.

Another witness was Mr. Edward Capps, who described himself as engaged in the surveying and building trade for thirty years, so that his attention had been directed to the influence of credit on the manner in which buildings are erected in London. He, too, testified in favor of inconvertible paper. Here are some of his answers.

"Would you recommend the issue of an inconvertible paper currency, with the view of remedying the evils which you describe? — I was present and heard the examination of Mr. Twells, and he was mentioning a project, by which he thought, that, instead of the £14,000,000 of paper which the Bank issues upon securities, you might go to the extent of £20,000,000 of an inconvertible paper. I think I understood the proposition rightly, as being to that effect. Though it is not exactly the proposition which I should make, yet I cannot see any objection to that proposition myself."[1]

"Do you believe that the paper which you recommend would be, on the average, of the same value as the present bank-note, which is convertible into gold? — I think that very shortly it would be of a higher value than our present standard. If any person had to be paid £10,000 fifteen years hence, and had the option whether it should be paid in that way or in the standard of gold, I think he would exercise a wise discretion in choosing the paper."[2]

"You are not in favor of what is called inconvertible paper, in the sense of worthless paper, are you? — Not at all.

"How do you distinguish between your paper and the rags which have in other cases been issued? — Unless I know the principle, I cannot say.

[1] Report on Bank Acts, 1857, Part I., Q. 5422.
[2] Ibid., Q. 5458

"Take the French assignats. — The French assignats were issued upon no principle at all, because no provision was made for their redemption." [1]

Against these witnesses was the testimony of a person perhaps the highest living authority on this question. I refer to Lord Overstone, known before his elevation to the peerage as Mr. Jones Loyd, the eminent banker, whose life makes him practically acquainted with this subject, while his liberal studies and various experience add to the solidity of his judgment. His testimony on this occasion, extending over almost three days, occupies nearly one hundred folio pages. Writers on finance have quoted it ever since, and practical men have accepted it as a guide. In reply to questions by the Committee, he declared himself strongly opposed to the issue of Government notes not payable in specie on demand. In his opinion "they would generate a state of utter confusion which could not be tolerated for three months." [2] Then again: —

"It is quite clear that there would be a discount upon these notes in the first place; they would not answer the purpose of a circulating medium; it would throw everything into confusion in the very first stage of the process: that would be the first difficulty." [3]

Here are his answers to other questions.

"Your Lordship was asked, on the last day, whether it would not be possible in a great degree to mitigate such difficulties as I have endeavored to portray, by having two sorts of notes, one of them payable in bullion, but the other,

[1] Report on Bank Acts, 1857, Part I., Q. 5483–5485.

[2] Ibid., Q. 3825. The Evidence of Lord Overstone is in a separate volume, revised by himself.

[3] Ibid., Q. 3822.

if I may use the expression, a sort of I O U note between the Government and the public; whether, inasmuch as the Government owes £6,000,000 or £7,000,000 every quarter, in the shape of dividends or expenses, and the country owes £6,000,000 or £7,000,000 of taxes, it would not be possible to arrange that there should be two sorts of currency afloat,— one the common banking note, payable in bullion, and applicable for all general purposes, and the other a note applicable in the more limited sense? — Our affairs would then go on very much in the way that a man would walk with one of his legs six inches shorter than the other. One set of notes would circulate at a depreciation, compared with the other set of notes; hence great inconvenience and confusion would arise."[1]

"Do you believe, that, if any person had notes which insured to him the payment of all the Government demands upon himself, though he had no demands upon him directly, he would not find numbers of persons who would exchange those notes for him at a premium or a discount? — Then you would have a certain proportion of the monetary system of the country circulating at a discount. I cannot conceive a greater state of monetary disorganization than that."[2]

But the testimony of Lord Overstone, strong as it was, against an inconvertible currency, still admitted a possible occasion for departure from it; and here his testimony bears directly on the pending proposition. Alluding to the well-known suspension of specie payments by the Bank of England in 1797, he says: —

"I am bound to say that with regard to that period of 1797 there are circumstances which may make it doubtful whether the Suspension Act was not a justifiable measure. The pressure in 1797 was undoubtedly, to a considerable

[1] Report on Bank Acts, 1857, Part I., Q. 4049.
[2] Ibid., Q. 4054.

extent, *connected with political alarm, with the fear of foreign invasion,* causing an internal demand for the exchange of notes into coin. *Under such circumstances, there is no measure founded upon principle which can pretend to afford an adequate protection. If, for instance, at this moment, this country were suddenly exposed to the calamity of a very large foreign force occupying its soil, or if it were exposed to the calamity of a very formidable and serious civil insurrection,* no doubt a state of panic alarm with regard to the paper money might arise, against which no provisions of the Act of 1844, nor any provisions founded upon principle, could possibly afford an adequate protection. But from that view of the subject, again, there is an inference to be drawn of a very instructive and warning character, namely, — to make this Committee very cautious how they extend the issues upon securities. The only protection against such contingencies is the existence of a large amount of coin, or of bullion, in the country; and therefore, when we are looking to contingencies of that nature, we may very properly pause at the questionable recommendation of increasing our issues upon securities, which is, in other words, diminishing our issues upon bullion." [1]

If this authoritative testimony be accepted in favor of a constant specie currency, it is unquestionably important as recognizing grounds of exception, — as, according to the language of the witness, if the country were "suddenly exposed to the calamity of a very large foreign force occupying its soil, or to the calamity of a very formidable and serious civil insurrection." In these exceptions there is matter for much reflection. Strong as we may be against any questionable currency, we must not be insensible to a possible limitation even of this just principle. In short, we must be

[1] Report on Bank Acts, 1857, Part I., Q. 4179.

content with the best we can command. And here history affords valuable illustrations in conformity with this testimony.

In 1745, the alarm occasioned by the advance of the Highlanders, under the Pretender, as far as Derby, led to a run upon the Bank of England; and in order to gain time, the directors, while continuing to pay in specie, adopted the device of paying in shillings and sixpences. But, next to the retreat of the enemy, their best relief was found in a resolution by the merchants and traders of the city, declaring their willingness to receive bank-notes in payment of any sum due, and pledging their utmost endeavors to make all payments in these bank-notes. This proceeding, it is perceived, was prompted by the pressure of civil disturbance. But the most authentic case is that of 1797, when the Bank, under pressure of political events, was prohibited, by Order in Council, *issued on Sunday*, the 26th of February, from paying their notes in cash, until the sense of Parliament should be taken on the subject. At the meeting of Parliament, after much discussion, it was agreed to continue the suspension till six months after the signature of a definitive treaty of peace, *thus positively recognizing the existence of war as a reason for this departure from principle.* A recent English writer vindicates this act as follows.

"Much difference of opinion has existed with respect to the policy of the restriction in 1797; but, considering the peculiar circumstances under which it took place, its expediency seems abundantly obvious. The run did not originate in any over-issue of bank paper, *but grew entirely out of political causes. So long as the alarms of invasion continued, it was clear that no bank paper immediately convertible into*

gold would remain in circulation. And as the Bank, though possessed of ample funds, was without the means of instantly retiring her notes, she might, but for the interference of Government, have been obliged to stop payments, — an event, which, had it occurred, might have produced consequences fatal to the public interests. The error of the Government did not consist in their coming to the assistance of the Bank, *but in continuing the restriction after the alarm of invasion had ceased*, and there was nothing to hinder the Bank from safely reverting to specie payments."[1]

Unhappily, the definitive treaty of peace, on which the restoration of specie payments depended, was not consummated till 1815, so that throughout this long period there was an inconvertible currency, which even the sanction of Parliament did not save, in 1814, from a discount of twenty-five per cent. But peace did not bring specie at once. The routine of paper had become too strongly fixed, and it was only through the remarkable efforts of Sir Robert Peel, in 1819, that an Act of Parliament was passed requiring the payment of specie at the Bank in 1823. Such is the practical testimony of British experience.

The experience of France is similar. I do not now refer to the old *assignats*, but to a modern instance. Beyond question, the Bank of France is conducted with caution and skill; but no caution and skill are adequate to counteract the influence of a sudden revolution, especially like that of 1848, when the Republic was declared. The Bank made large advances to the Provisional Government. This obligation, combined with distrust universally prevalent, occasioned so severe a drain of gold, that, to prevent the total exhaustion of its vaults, the

[1] Encyclopædia Britannica (8th edit.), art. MONEY, Vol. XV. p. 456.

Bank was authorized by Government decree of 16th March, 1848, — just three weeks after the Revolution, — to suspend specie payments, while its notes were at the same time made a legal tender. To prevent abuse, possible in such a condition of things, a maximum of issues was fixed at three hundred and fifty million francs. Such precautions were proper; but the fact of the authorized suspension remains an example of history. The prompt return to the true system is not without encouragement.

If these instances are entitled to consideration, they seem to show, that, according to the experience of other countries, Government may be compelled at times to relax the rigor of its requirements with regard to convertible paper. But they do not fix the limitation to the exercise of this extraordinary discretion. That the discretion exists is important in the present debate.

It is a discretion kindred to that under which the *Habeas Corpus* is suspended, so that citizens are arrested without the forms of law, — kindred to that under which an extensive territory is declared to be in a condition of insurrection, so that all business with its inhabitants is suspended, — kindred to that which unquestionably exists, to obtain soldiers, if necessary, by draft or conscription instead of the free offering of volunteers, — kindred to that under which private property is taken for public uses, — and kindred, also, to that undoubted discretion which sanctions the completest exercise of the transcendent right of self-defence.

But, while recognizing the existence of the discretion in the last resort, under the law of necessity, the question still remains if this necessity actually exists. And

now, as I close, I shall not cease to be frank. Is it necessary to incur all the unquestionable evils of inconvertible paper, forced into circulation by Act of Congress, — to suffer the stain upon our national faith, to bear the stigma of a seeming repudiation, to lose for the present that credit which in itself is a treasury, and to teach debtors everywhere that contracts may be varied at the will of the stronger? Surely there is much in these inquiries to make us pause. If our country were poor or feeble, without population and without resources, if it were already drained by a long war, if the enemy had succeeded in depriving us of the means of livelihood, then we should not even pause. But our country is rich and powerful, with a numerous population, busy, honest, and determined, abounding in unparalleled resources of all kinds, agricultural, mineral, industrial, and commercial; it is yet undrained by the war in which we are engaged, nor has the enemy succeeded in depriving us of any means of livelihood. It is hard, very hard, to think that such a country, so powerful, so rich, and so beloved, should be compelled to adopt a policy of even questionable propriety.

If I mention these things, if I make these inquiries, it is because of the unfeigned solicitude which I feel with regard to this measure, and not with the view of arguing against the exercise of a constitutional power, when, in the opinion of the Government to which I give my confidence, the necessity for its exercise has arrived. Surely we must all be against paper money, we must all insist upon maintaining the integrity of the Government, and we must all set our faces against any proposition like the present, except as a temporary expedient, rendered imperative by the exigency of the hour. If it has my

vote, it will be only because I am unwilling to refuse the Government especially charged with this responsibility that confidence which is hardly less important to the public interests than the money itself. Others may doubt if the exigency is sufficiently imperative; but the Secretary of the Treasury, whose duty it is to understand the occasion, does not doubt. In his opinion the war requires this sacrifice. Uncontrollable passions are let loose to overturn the tranquil conditions of peace. Meanwhile your soldiers in the field must be paid and fed. There can be no failure or postponement. A remedy is proposed which at another moment you would reject. Whatever the national resources, they are not now within reach, except by summary process. Reluctantly, painfully, I consent that the process shall issue.

And yet I cannot give such a vote without warning the Government against the dangers from such an experiment. The medicine of the Constitution must not become its daily bread. Nor can I disguise the conviction that better than any device of legal tender will be vigorous, earnest efforts for the suppression of the Rebellion, and the establishment of the Constitution in its true principles over the territory which the Rebellion has usurped.

LOYALTY A QUALIFICATION REQUIRED IN A SENATOR.

SPEECHES IN THE SENATE, FEBRUARY 18 AND 26, 1862.

JANUARY 6, 1862, the credentials of Hon. Benjamin Stark as Senator of Oregon were presented, when Mr. Fessenden, of Maine, moved that the oath be not administered at present, and that the credentials, together with certain papers which he offered, be referred to the Committee on the Judiciary. These papers, according to him, stated that Mr. Stark was understood by everybody in his vicinity to be an open and avowed supporter of Secession, — that he had openly defended the course of the South in seceding, and given utterance to sentiments totally at war with the institutions and the preservation of our country, such as approving the attack on Fort Sumter, making declarations to the effect, that, in the event of civil war, which, in fact, had already commenced, he would sell his property in Oregon and go South and join the Rebels, — that the Rebels were right, — that the Davis Government was, in fact, the only Government left, — that there was, in fact, no Government of the Union at all. Mr. Fessenden added, that numerous declarations of this kind were sworn to by persons certified and proved to his satisfaction to be perfectly reliable. In the course of the debate, Mr. Fessenden further remarked: "Now, Sir, I do not hesitate to say, that, if a part only of what is stated in these papers is true, I presume the Senator from Indiana [Mr. BRIGHT] himself would vote upon the instant to expel this gentleman from the body, if he had taken the oath."[1]

The motion of Mr. Fessenden was opposed by Mr. Bayard, of Delaware, and Mr. Bright, of Indiana, the latter objecting especially that the motion was without precedent. Here Mr. Sumner spoke briefly, presenting the point on which he subsequently enlarged.

[1] Congressional Globe, 37th Cong. 2d Sess., p. 183.

I DESIRE, Mr. President, to make one single remark. It is said that the proposition before the Senate is without precedent. New occasions teach new duties; precedents are made when the occasion requires. Never before has any person appeared to take a seat in this body whose previous conduct and declarations, as disclosed to the Senate, gave reasonable ground to distrust his loyalty. That case, Sir, is without precedent. It behooves the Senate to make a precedent in such an unprecedented case. At this very moment we are engaged in considering if certain Senators shall not be expelled for disloyalty; and it seems to me we shall do our duty poorly, if we receive a new comer with regard to whose loyalty there is reasonable suspicion.

January 10, the credentials of Mr. Stark and the accompanying motion were taken up for consideration again, when Mr. Bayard made an elaborate speech against the motion. Mr. Sumner replied in remarks which will be found in the *Congressional Globe*,[1] adducing the case of Philip Barton Key, a sitting member from Maryland, against whom it was alleged, that he "either now was or had been a British pensioner," and that "an inquiry ought to be had in this matter, as, were it true, it would certainly be a disqualification."[2] After further debate, the motion of Mr. Fessenden prevailed, and the credentials, with the papers, were referred to the Committee.

February 7th, Mr. Harris, of New York, reported from the Committee, that, "without expressing any opinion as to the effect of the papers before them upon any subsequent proceeding in the case," Mr. Stark was "entitled to take the constitutional oath of office." Mr. Trumbull, Chairman of the Committee, dissented from the report, thinking it "the duty of the Committee to pass upon the testimony before it in regard to the loyalty of the Senator from Oregon."[3]

February 18th, the Senate resumed the consideration of this case, when Mr. Harris spoke in favor of the report, and Mr. Hale, of New Hampshire, against it. The latter moved that the report be recom-

[1] 37th Cong. 2d Sess., p. 266.
[2] Annals of Congress, 10th Cong. 1st Sess., col. 1492, 1493.
[3] Congressional Globe, 37th Cong. 2d Sess., p. 696.

mitted, with instructions to inquire whether the evidence so far impeached Mr. Stark's loyalty as to disqualify him from holding a seat in the Senate. This motion presented the very point raised by Mr. Sumner at the beginning, and he spoke upon it as follows.

MR. PRESIDENT, — Over each House of Congress, while in session, floats the flag of the Union. So long as that flag ripples above our end of the Capitol, the passing stranger knows that the Senate is engaged in loyal service to the Republic. In no other country is the national flag thus employed; and I remember to have heard a distinguished artist[1] — who, unhappily, no longer lives except in his works, some of which are near us — remark that this custom was to him the most original and picturesque feature of Washington. The national flag, symbolizing the labors of Congress, seemed to have a double beauty, reminding him not only of country, but also of the patriotic service in which those the people trusted were then engaged.

The Senate is now in session, performing its allotted duties, and the national flag is over it. I need not enlarge on these duties, legislative, diplomatic, and executive. They are present to your minds. Suffice it to say, that not a law can be passed, not a treaty can be ratified, not a nomination to office can be confirmed, without the action of the Senate. And now you are to determine the plain question, if this body, with these exalted, various, and most confidential trusts, and actually sitting beneath the flag of the Union, is so utterly powerless and abject, that, before admitting a person to participation in these trusts, it can make no inquiry with regard to his loyalty, and cannot even consider

[1] Horatio Greenough, the sculptor.

evidence tending to show that he is false to the flag now waving over us. Sir, if this be so, if the Senate is really in this condition of imbecility, if its doors must necessarily swing open to any traitor, even, presenting himself with a certificate in his pocket, let the flag drop, and no longer symbolize the loyal service in which we are engaged. The Report of the Committee, expressed in simple English, without circumlocution or equivocation, is, "Free admission to traitors here, and no questions asked." In other words, the claimant of a seat in the Senate can enter and take it without question with regard to loyalty. He can freely participate in these most important trusts, with the flag of the Union waving over him, and nobody shall ask in advance whether he is true to that flag.

But it is argued by the Senator of New York [Mr. HARRIS], that the Constitution having provided for the expulsion of a Senator by a vote of two thirds, there can be no inquiry on the threshold, except with regard to the qualifications of age, citizenship, and inhabitancy of the State whose certificate he bears. If this be true, then open, flaunting treason is not a disqualification, and the traitor, if allowed to go at large, may present his certificate and proceed to occupy a seat among us. A proposition is sometimes answered simply by stating it; and it seems to me that this is done in the present case. The Constitution was the work of wise and practical men, and they were not guilty of the absurdity which such an interpretation attributes to them. They did not announce that a disloyal man, or, it may be, a traitor, may enter this Chamber without opposition, and then intrench himself securely behind the provision requiring a vote of two

thirds for his expulsion; they did not declare that the mere certificate of a Senator is an all-sufficient passport to shield a hateful crime itself from every inquiry; nor did they insist that disloyalty in this high place is to be treated so tenderly as not even to be touched, until, perhaps, it is too late. This whole argument, that the claimant must be admitted to the Senate and then judged afterwards, is more generous to the claimant than just to the Senate; it is more considerate of personal pretensions than of public interests. To admit a claimant charged with disloyalty, in the hope of expelling him afterwards, is a voluntary abandonment of the right of self-defence, which belongs to the Senate as much as to any individual. The irrational character of such abandonment is aptly pictured in a Parliamentary speech reproduced in curious verses, more expressive than poetical, and once quoted by Mr. Webster: —

> "I hear a lion in the lobby roar:
> Say, Mr. Speaker, shall we shut the door,
> And keep him there? or shall we let him in,
> To try if we can turn him out again?"[1]

But the Senate is asked to do this very thing. Instead of shutting the door and keeping disloyalty out, we are asked to let it in and see if we can get it out again.

If we look closely at the Constitution, we cannot hesitate. It is assumed by the Committee that there are but three qualifications for a Senator, and these words are quoted: —

"No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a

[1] Bramston, Art of Politics, 162–165: Dodsley's Collection, Vol. I. p. 265. Speech of Col. Titus in the House of Commons, Jan. 7, 1680–1, on the King's Message concerning the Exclusion Bill: Hansard's Parliamentary History, Vol. IV. col. 1291. Webster's Works, Vol. II. p. 443.

citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

According to these words, the three qualifications are (1) age, (2) citizenship, and (3) inhabitancy of the State he assumes to represent. These qualifications are not questioned, because they are grouped in a special clause of the Constitution; and every applicant, on presenting himself here, is subjected at once to these tests. But it is a mistake to suppose that these are the only qualifications imposed. There is another, mentioned in a later part of the Constitution, more important than either of the others; so that, though last in place, it is first in consequence. It is *loyalty*, which I affirm is made a qualification under the Constitution; and we have already seen, that, even if the organic law were silent, it is so essential to the fitness of a Senator for his trusts, that the Senate, in the exercise of its discretion, ought to require it. But the language of the Constitution leaves no room for doubt.

The words establishing loyalty as a qualification are as follows: —

"*The Senators and Representatives before mentioned . . . . shall be bound by oath or affirmation to support this Constitution.*" [1]

These words are explicit in requiring the oath to support the Constitution. And the first statute of the First Congress, approved June 1, 1789, and standing at the head of our statute-book, provides for the administration of the oath as follows: —

[1] Art. 6, par. 3.

"The oath or affirmation required by the sixth article of the Constitution of the United States shall be administered in the form following, to wit: 'I, A. B., do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States.' . . . .

"The President of the Senate for the time being shall also administer the said oath or affirmation to each Senator who shall hereafter be elected, *previous to his taking his seat.*" [1]

Thus by the Constitution, explained by the earliest statutes, must the oath to support the Constitution be administered to a Senator *previous to his taking his seat.* But the oath is simply evidence and pledge of loyalty; and this evidence and pledge constitute a condition precedent to admission. As loyalty is more important than age or citizenship or inhabitancy, it has been put under the solemn safeguard of an oath. So far from agreeing with the Committee, or with the Senator from New York [Mr. HARRIS], that it is not named among "qualifications," it seems to me that it stands first among them. Of course, it is vain to say that it is not expressly called a "qualification." Let us ascend from words to things. It is made a qualification in fact, call it by what name you will. Men are familiarly said to "qualify" for an office, when they take the necessary oath of office; so that the language of common life becomes an interpreter of the Constitution. Sir, loyalty is among constitutional "qualifications" of a Senator.

Resting on this conclusion, and assuming that disloyalty is a constitutional disqualification, the single question remains as to the time when evidence with

[1] Statutes at Large, Vol. I. p. 23.

regard to it may be considered. Now, as the Senate, under the Constitution, is exclusive judge of the qualifications of its members, the time when it shall consider a case is obviously within its own discretion, according to the exigency. It may take up the case early or late, before or after the administration of the oath. Under ordinary circumstances, where the case turned upon a question of age or citizenship or inhabitancy, it would be reasonable, and according to usage, that the claimant should be admitted under his certificate, which is *prima facie* evidence of the requisite qualifications. In such a case the public interests would not suffer, for the disqualification is rather of *form* than of *substance*. But where the disqualification is founded on disloyalty, it is obvious that the public interests might be seriously compromised, if the claimant were allowed any such privilege,— for the disqualification is of *substance*, and not of *form*. Disloyalty must not find a seat in the Senate, even for a day; nor can any claimant charged with disloyalty complain that the Senate refuses welcome to its trusts.

The oath required to support the Constitution is on its face *an oath of loyalty*, and nothing else. The claimant may declare willingness to take it; but such declaration is not an answer to evidence showing disloyalty, unless you are ready to admit present professions to be a sufficient cloak for disloyalty, or, it may be, treason, in the past. On a question of such importance, with positive evidence against his loyalty, the claimant cannot expect permission to purge himself on his oath. The issue is distinctly presented, if he has not already committed himself, so that his oath to support the Constitution is entitled to no considera-

tion. Sir Edward Coke pronounces generally, that "an infidel cannot be sworn," — a doctrine which has been since mitigated in our courts. But whatever the rule on this subject in our courts, it is reasonable that an *infidel* to our Government, an infidel to our Constitution, should not be permitted by the Senate to go through the mockery of swearing to support the Constitution; nor should a person charged with such *infidelity* be permitted to take the oath, unless able to remove the grounds of the charge. The oath is administered by the President of the Senate at your desk, Sir, in the presence of the Senators; and the solemnity of the occasion is an additional argument against administering it to any person whose loyalty is not above suspicion. There is a German treatise entitled, "*On the Lubricity and Slippery Uncertainty of the Suppletory Oath*," — being the oath of a litigant party in his own case. But an oath to support the Constitution by a claimant charged with disloyalty would be open to suspicion, at least, of lubricity and slippery uncertainty not creditable to the Senate.

We are told in the Epistle to the Hebrews that an oath is "the end of the whole dispute";[1] but this of course assumes that the oath is above question. If not above question, it is wrong to allow the oath, — at least in the Senate of the United States, which is the exclusive judge of its own proceedings.

I say nothing of the facts in the present case; nor do I venture to suggest any judgment on the final weight to which they may be entitled. I confine myself to the simple question as to the duty of inquiry at the present stage of proceedings.

[1] Heb., vi. 16.

Mr. Trumbull of Illinois, Mr. Dixon of Connecticut, Mr. Davis of Kentucky, Mr. Clark of New Hampshire, and Mr. Morrill of Maine followed against the Report, which was sustained by Mr. Carlile of West Virginia, Mr. McDougall of California, Mr. Ten Eyck of New Jersey, and Mr. Foster of Connecticut. Mr. Sumner moved that the resolution of the Committee be amended so as to read : —

" *Resolved*, That Benjamin Stark, of Oregon, appointed a Senator of that State by the Governor thereof, and now charged by affidavits with disloyalty to the Government of the United States, is not entitled to take the constitutional oath of office without a previous investigation into the truth of the charge."

Here Mr. Sumner remarked : —

It is my earnest hope that the claimant will be able to purge himself, and show that he is a loyal citizen. Meanwhile I do not wish to prejudge him ; I have not prejudged him ; I have come to no conclusion on the facts ; but I have come to a perfect, fixed, and irreversible conclusion on the duty of the Senate at this time to enter into this inquiry, and to ascertain from the evidence whether he is loyal or not.

Mr. Fessenden followed, withdrawing his opposition, and concluded by avowing his purpose : " When the question appears before me in a shape that I can vote directly upon it, to vote that the gentleman who presents his credentials be permitted to take the oath and become a member of the Senate."

February 24th, the debate was resumed, when Mr. Howe, of Wisconsin, spoke in favor of the admission, and Mr. Doolittle against it.

February 26th, Mr. Hale withdrew his proposition, so that the amendment of Mr. Sumner was in order. He then spoke as follows.

MR. PRESIDENT, — I am unwilling to speak again in this debate. Nothing but a sense of duty makes me break silence. But I am determined that this Chamber of high trust, so carefully guarded by the Constitution, shall not be opened to disloyalty, if any

argument, any persuasion, or any effort of mine can prevent it.

Of course, in this debate something is assumed. It is simply this: that the evidence touching the loyalty of the claimant is not valueless; that it merits attention; that it affords *probable cause*, if I may adopt the phrase of the Roman Law, for distrust; that it is enough to put a party on the defensive. If this be the case, if all these affidavits, verified by the certificate so numerously signed, are not put aside as baseless, then the Senate must inquire into the charge. The result of the inquiry may be one way or another; but the inquiry must be made. Not to make it is abandonment of present duty; and not to assert the power is abandonment of an essential right of self-defence.

I have listened to the various arguments pressing the Senate to disarm itself, as they have been presented by able Senators, especially by the Senator from Maine [Mr. FESSENDEN] and the Senator from Wisconsin [Mr. HOWE]; and I have felt, as I listened, new confidence in the constitutional power of the Senate to protect itself at all times against disloyalty, and in the duty to exercise this constitutional power at any time, early or late, in its completest discretion.

But it is said, — and I believe the Senator from Maine first presented this argument, which has been urged so strongly by the Senator from Wisconsin, — that, if we reject the present claimant, Oregon will be without a representative. And if we expel him, will not Oregon be without a representative? Surely this is no reason for hesitation in either case. I, too, desire a representative for Oregon; but I know full well that a disloyal representative is no representative, — or rather, Sir, is worse

than no representative. In sustaining such a representative, you sacrifice substance to form, — you abandon the living principle, content with the dead letter, — you "keep the word of promise to the ear, and break it to the hope," — you offer to the people of Oregon a stone, when they demand bread. In the name of the people of Oregon, whose wishes are manifest in the papers before us, I protest against the pretension that they can be represented by a disloyal person. Misrepresentation is not and never can be representation.

But it is said, — and I believe the Senator from Maine made the argument, — that the evidence against the claimant, if sustained, might justify expulsion, but will not justify refusal of admission to take the oath.

Mr. Fessenden. The Senator will state my position as I put it, and that was, if the same language and declarations were proved as coming from Mr. Stark while a Senator, I thought they might justify his expulsion.

Mr. Sumner. The Senator says, that, if the same language had been used while he was a Senator, it might justify expulsion. That is enough, Sir; and yet the Senator argues that it will not justify the Senate in refusing to open its doors, when he presents himself for admission. In plain terms, the Senate may pronounce the stigma of expulsion, but not the judgment of exclusion. A similar absurdity would be to say, that in private life an offence would justify kicking an intruder down stairs, but would not justify refusing him admission to our house. It is enough to state this case. Nothing can be clearer in the light of reason — and I say also of the Constitution — than that it is the duty of the Senate to meet disloyalty on the threshold, — to

say to it, wherever it first shows itself, that this Chamber is no place for it. The English orator pictured his desolation, when he said that he was alone, and had none to meet his enemies in the gate.[1] Desolate will be the Senate, when it cannot meet disloyalty in the gate.

But the Senator from Maine complains, and the Senator from Vermont [Mr. COLLAMER] joins in the complaint, that the claimant is not allowed to *purge* himself by his oath, — thus using a technical phrase of the law, applicable chiefly to suspected persons. Not allowed to *purge* himself! Rather say, Sir, not allowed to *perjure* himself. For, in view of the testimony on your table, the inference is, unhappily, too strong, that in any oath to support the Constitution he must perjure himself. I say this with pain, and anxious not to prejudge the case, but simply because the facts, as they stand without contradiction, leave no opportunity for any other conclusion.

Since complaint is made by learned lawyers that the claimant is not allowed to purge himself, I desire to adduce a legal analogy on this question. It is well known that by the Common Law a person is not permitted to take an oath who does not believe in God. This is the general principle ; but when we look at the application, we see how completely it illustrates the present case. If a person is known to have openly and recently declared disbelief, he will not be permitted to purge himself by his oath, for the reason that his own declarations are decisive.

Here Mr. Sumner read from Greenleaf's *Law of Evidence*, § 370, and the note to that section, and then proceeded.

[1] Burke, Letter to a Noble Lord: Works (London, 1801), Vol. VII p. 417.

Here again is additional illustration from the annotations to the great work of Phillipps on the Law of Evidence.

"After the incompetency of the witness from defect of religious belief is satisfactorily established by proof of his declarations out of court, he will not be permitted to deny or explain such declarations or his opinions, or to state his recantation of them, when called to be sworn. But he may be restored to his competency on giving satisfactory proof of a change of opinion before the trial, so as to repel any presumption arising from his previous declarations of infidelity." [1]

I would not press this illustration too far. But it seems to me clear, that, if you accept the declarations of a person as decisive against his religious belief, they must be accepted as equally decisive with regard to his political belief. An oath to support the Constitution presupposes political belief, as much as the oath itself presupposes religious belief.

Pardon me, Sir, but I cannot refrain from astonishment that Senators, learned lawyers, should be willing to treat the oath to support the Constitution as an oath of *purgation*, an oath of *defecation*, an oath of *purification*, — by which a suspected person may cleanse himself, by which an evil spirit may be cast out. Sir, it is no such thing. Such is not the oath of the Constitution. By that oath the accepted Senator dedicates himself solemnly to the Constitution. It is not an oath of purgation, as Senators insist, but an oath of consecration. To such an oath may be fitly applied the words of the ancients, when they spoke of the oath as "the greatest pledge of faith among men."

[1] Cowen and Hill's Notes to Phillipps on Evidence, Note 55, p. 24.

I would not be carried into technicalities; but, since Senators insist that this oath is merely of purgation, I venture to add, that, according to early writers, there were two forms of oaths, — one technically styled "the oath of expurgation," sometimes the *ex officio* oath, by which persons were bound to answer all questions, even to the extent of accusing themselves or intimate friends. This oath was much used and abused in the days of Queen Elizabeth. At an earlier day it was administered to an Archbishop of York charged with murder, and no less than one hundred compurgators were sworn with him. The other is what is called "the promissory oath," which is the oath of the sovereign, the magistrate, the judge, the senator. Obviously this is widely different from the oath by which a person clears himself from suspicion, or cleanses his name.

There is another oath, with a peculiar title: I mean the *custom-house oath.* You all know something of this oath, which is taken hastily, without solemnity or question, and is now an acknowledged nuisance and mockery, against which people petition Congress. By such oaths, "sworn is the tongue, but unsworn is the mind." With such oaths for seed, perjury is the natural harvest. If Senators who have spoken in this debate can have their own way, you will degrade the solemn oath of the Constitution to the same class, and make it the seed of similar harvest.

For myself, I am determined, so far as my vote or voice can go, that the oath shall mean something, and that it shall be kept solemn and above suspicion. It shall not be degraded to be an oath of purgation or a custom-house oath, but shall be in all simplicity what is regarded by the Constitution an oath of office, in

itself the pure and truthful expression of assured loyalty, — not of loyalty still in question, still doubtful, so that people openly testify against it. And where there is evidence seriously impeaching the loyalty of a claimant, he shall not take that oath, with my consent, until the impeachment is removed. Sir, I am not insensible to the attractions of comedy, when well performed on the stage; but there is a place for everything, and I am unwilling to sit in my seat here and witness the comedy proposed. The Senate is to resolve itself into a theatre, under the management of grave Senators, — the Senator from New York, the Senator from Maine, and other Senators, — and we are to see the play proceed. The claimant from Oregon crosses the floor, and, under honorable escort, approaches the desk, takes the oath, and kisses the book. The title of the play is borrowed from a forgotten old English drama: "Treason made Easy; or, An Oath no Great Thing."

It ill becomes the Senate at this moment to do or to forbear anything by which the standard of loyalty can be lowered. If it justly expects loyalty from others, if it requires loyalty in its soldiers and officers, surely it ought to set an example in its own members. Toward itself, at least, it cannot be too austere in requirement. Wherever about us disloyalty shows itself, whether in the Senate or in its lobby, whether already intrenched in this Chamber or struggling to enter in, whether planted at these desks or still standing in the gate, we have one and the same duty to perform. We must inquire into its character, and if it be found unworthy of trust, we must chastise it or exclude it. This is the least we can do.

Mr. Sumner was followed the same day by Mr. McDougall, Mr. Davis, Mr. Cowan, Mr. Carlile, Mr. Sherman, Mr. Harris, all in favor of admission, and by Mr. Wilmot, Mr. Trumbull, Mr. Dixon, against it.

February 27th, Mr. Browning spoke in favor of admission, Mr. Howard against it.

The vote was then taken on the amendment of Mr. Sumner, and it was lost, — yeas 18, nays 26.

The question recurred on the resolution of the Committee, which was adopted, yeas 26, nays 19; and Mr. Stark was admitted to take the oath.

The same question came up again in another form.

April 22d, the Committee to whom were referred the papers touching the disloyalty of Mr. Stark reported that "the Senator from Oregon is disloyal to the Government of the United States."

May 7th, Mr. Sumner introduced the following resolution: —

"*Resolved*, That Benjamin Stark, a Senator from Oregon, who has been found by a committee of this body to be disloyal to the Government of the United States, be, and the same is hereby, expelled from the Senate."

June 5th, Mr. Sumner moved that the Senate proceed with the consideration of this resolution, and explained it briefly.

Mr. President, — The Senate will observe that the resolution declares that the Senator from Oregon has been found by a Committee of the Senate to be disloyal. Now, Sir, I have no desire to discuss the facts of this case. But, in order to exhibit the urgency of this question, it is my duty to exhibit the conclusions of the Committee, set forth in their Report, as follows.

"1st. That for many months prior to the 21st November, 1861, and up to that time, the said Stark was an ardent advocate of the cause of the rebellious States.

"2d. That, after the formation of the Constitution of the Confederate States, he openly declared his admiration for it, and advocated the absorption of the loyal States of the Union into the Southern Confederacy, under that Constitution, as the only means of peace, warmly avowing his sympathies with the South.

"3d. That the Senator from Oregon is disloyal to the Government of the United States."

Of these propositions the first two had the sanction of the Senator from Virginia [Mr. WILLEY], while all three had the sanction of the rest of the Committee, being the Senator from New Hampshire [Mr. CLARK], the Senator from Indiana [Mr. WRIGHT], the Senator from Michigan [Mr. HOWARD], and the Senator from Ohio [Mr. SHERMAN]. Thus, in a Special Committee of five, raised expressly to consider this case, raised, too, after protracted discussion in the Senate, four of the Committee united in all the conclusions of the Report, and the dissenting member united in the first two conclusions. And this Report is, if possible, entitled to additional consideration, when it is known that the Senator from Oregon himself appeared before the Committee. On these accounts I accept the Report, and do not wish to go into it or behind it. It is with me the solemn verdict of a jury duly impanelled for the trial of a cause.

But if the Committee is the jury, the Senate is the court; and it remains that judgment should be entered.

I hear a voice saying that we must not take time for this question. Pray, Sir, what time is needed? The time has been already taken. The hearing has been had, the verdict is rendered.

Pray, why not take time? We are engaged in war to put down disloyalty. For this we set armies in the field, and contend in battle with our own fellow-citizens. For this we incur untold debts. For this we are preparing to incur untold taxation. Sir, all this is simply to put down disloyalty. And yet, when a committee of this body, after careful inquiry, solemnly declares a

Senator disloyal to the National Government, we are told that there is no time to consider the question. Sir, I am against disloyalty, wherever it shows itself, whether in belligerent States, sheltered and strengthened by numbers, or sitting here, with all the privileges of this Chamber. Others will do as they please; but I cannot remain silent, while disloyalty, already exposed by our own Committee, is allowed a seat in our councils, open and secret. In not acting, you will discredit the Report of the Committee, or show that the Senate is indifferent to the character of its members. I will have no part in any such thing.

The Senate refused to consider the resolution.

June 6th, Mr. Sumner again moved to proceed with the resolution, urging, that, with the Report of the Committee on the table affirming his disloyalty, it was the duty of the Senate to act promptly.

The question, being taken by yeas and nays, resulted, yeas 16, nays 21. So the motion was not agreed to.

HELP FOR MEXICO AGAINST FOREIGN INTERVENTION.

REPORT FROM THE COMMITTEE OF FOREIGN RELATIONS UPON THE DRAUGHT OF A CONVENTION WITH MEXICO, FEBRUARY 19, 1862.

A CONVENTION was made at London, October 31, 1861, between Great Britain, France, and Spain, professedly to obtain redress and security from Mexico for citizens of the three contracting powers. Provision was made for the accession of the United States as a fourth party; but the note inviting us to join was dated a month after the Convention. The invitation was declined. But, anxious to help Mexico, Mr. Seward proposed pecuniary aid, in the hope of enabling our neighbor republic to satisfy the demands of the invading allies, so far at least as to make them withdraw. The draught of such a Convention with Mexico was transmitted to the Senate, who were asked to give their advice with regard to it.

A few passages of a letter from Mr. Corwin to Mr. Sumner, dated at Mexico, April 14, 1862, will show the condition of things there.

"The general and leading objects of my mission to Mexico were, first, to prevent the Southern Confederacy from obtaining any recognition here, and thus cut off the hope of augmenting the power of the South by acquisition, accompanied with Slavery, in Mexico, or any of the Southern Spanish-American republics; secondly, to use every proper means to prevent European power from gaining a permanent hold upon this part of the American Continent.

"In the first object I have fully succeeded. The Southern Commissioner, after employing persuasion and threats, finally took his leave of the city, sending back from Vera Cruz, as I am informed, a very offensive letter to the Government here. In obtaining the second end I have had more difficulty. . . . .

"If the French attempt to conquer this country, it is certain to bring on a war of two or three years' duration. The gorges of the mountains, so frequent here, afford to small detachments stronger holds than any position fortified by art; and the Mexicans have a strong hatred of foreign rule,

which animates the whole body of the people. I trust our Government will remonstrate firmly against all idea of European conquest on this continent, and in such time as to have its due influence on the present position of France in Mexico. . . . .

"But I am satisfied this danger may be avoided by the pecuniary aid proposed by the present treaty with us, and the united diplomacy of England, Spain, and the United States. If these means are not promptly and energetically applied, a European power may fasten itself upon Mexico, which it will become a necessity with us, at no distant day, to dislodge. To do this, in the supposed event, would cost us millions twenty times told more than we now propose to lend upon undoubted security."

Spain and England soon withdrew from coöperation, leaving the French Emperor alone to pursue the unhappy enterprise, which ended in the sacrifice of Maximilian, whom he had placed on the Mexican throne.

The Committee on Foreign Relations, to whom was referred a Message from the President, of December 17, 1861, transmitting a Draught for a Convention with the Republic of Mexico, with accompanying papers, and a Message from the President, of January 24, 1862, transmitting a Despatch from Mr. Corwin, Minister at Mexico, have had the same under consideration, and report.

ON the 2d of September, 1861, Mr. Seward, in a despatch to Mr. Corwin, at Mexico, announced that the President greatly desired the political status of Mexico as an independent nation to be permanently maintained; that the events communicated by Mr. Corwin alarmed him, and he conceived that the people of the United States would scarcely justify him, were he to make no effort for preventing so great a calamity on this continent as would be the extinction of that neighbor republic; that he had therefore empowered Mr. Corwin to negotiate a treaty with Mexico for the assumption by the United States of the interest, at three per cent, upon the funded debt of that country, the prin-

cipal of which was understood to be about sixty-two millions of dollars, for the term of five years from the date of the decree recently issued by Mexico suspending such payment, provided that Mexico could pledge to the United States its faith for the reimbursement of the money, with six per cent interest, to be secured by special lien upon all the public lands and mineral rights in the several Mexican States of Lower California, Chihuahua, Sonora, and Cinaloa, the property so pledged to become absolute in the United States at the expiration of the term of six years from the time when the treaty went into effect, if such reimbursement were not made before that time. The President felt that this course was rendered necessary by circumstances as new as they are eventful, and seeming to admit of no delay.

Mr. Seward proceeds to say, that his instructions are conditional upon the consent of the British and French Governments to forbear action against Mexico, on account of failure or refusal to pay the interest in question, until after the treaty had been submitted to the Senate, and, if ratified, then so long thereafter as the interest is paid by the United States.

Mr. Seward adds, that his instructions are not to be considered as specific, but general, subject to modification as to sums, terms, securities, and other points.

Mr. Corwin, in an earlier despatch, dated at Mexico, 29th July, 1861, and addressed to Mr. Seward, had already suggested the policy he was now authorized to pursue, and proposed a lien on the public lands and mineral rights in the provinces mentioned by Mr. Seward. From such arrangement, in his opinion, two consequences would follow: first, all hope of extending the domain of a separate Southern republic in this quarter

or in Central America would be extinguished; and, secondly, any further attempt to establish European power on this continent would cease to occupy either England or Continental Europe.

Afterwards, in a despatch, dated at Mexico, November 29, 1861, Mr. Corwin enclosed to Mr. Seward the project of a treaty between the United States and Mexico, by which the United States were to lend Mexico five millions of dollars, payable in monthly instalments of one half million a month, — also the further sum of four millions of dollars, payable in sums of one half million every six months; the whole to be secured by mortgage on the public lands, mineral rights, and Church property of Mexico, for the realization of which a board of five commissioners was to be organized, three to be appointed by Mexico and two by the United States, holding sessions in the city of Mexico until the debt and interest were fully discharged. No reference was made in the proposed treaty to the consent of the British and French Governments, mentioned by Mr. Seward as a condition, nor to the application of the money, when received by Mexico; nor does anything on this subject appear in the accompanying despatch.

The President, by his Message of December 17, 1861, submitted the draught of this treaty to the Senate for their advice. Afterwards, by another Message, of January 24, 1862, he called their attention to it again, in the following language.

"I have heretofore submitted to the Senate a request for its advice upon the question pending by treaty for making a loan to Mexico, which Mr. Corwin thinks will in any case be expedient. It seems to me to be my duty now to solicit an early action of the Senate upon the subject, to the end

that I may cause such instructions to be given to Mr. Corwin as will enable him to act in the manner which, while it will most carefully guard the interests of our country, will at the same time be most beneficial to Mexico."

Meanwhile, Great Britain, France, and Spain, by a Convention, dated at London, October 31, 1861, have entered into an alliance, the declared object of which is "to demand from the authorities of the Republic of Mexico more efficacious protection for the persons and properties of their subjects, as well as a fulfilment of the obligations contracted by the Republic of Mexico." The high contracting parties engaged not to seek for themselves, in the employment of coercive measures, any acquisition of territory, nor any special advantage, and not to exercise in the internal affairs of Mexico any influence of a nature to prejudice the right of the Mexican nation to choose and to constitute freely the form of its government. Desiring that the measures they intend to adopt should not bear an exclusive character, and being aware that the Government of the United States, on its part, has, like them, claims upon the Mexican Republic, they further agree that our Government shall be invited to join in the Convention.

Mr. Seward, in a despatch, dated at Washington, December 4, 1861, declined to join in the Convention, saying, "that the United States prefer, as much as lies in their power, to maintain the traditional policy recommended by the Father of their country, confirmed by successful experience, and which forbids them to make an alliance with foreign powers."

In pursuance of this Convention, the naval and military forces of the three great powers have assembled at San Juan de Ulua, and the flags of the three powers now

float over the castle. The Government of Mexico has rallied the people to resistance, and there is at this moment the prospect of a prolonged and exhausting contest. The occasion seems to have arrived, when the aid proposed by Mr. Seward, in his despatch of September 2, 1861, may be of decisive value to Mexico. To the United States it may also be of great importance, if it could be the means of removing from Mexico the pressure of hostile armaments, and placing a neighbor republic in a more tranquil and independent condition. If the Allied Powers desire security for their claims, and nothing else, then a reasonable provision of this nature ought to be satisfactory, so far as any question arises from the claim.

The debt of Mexico to the Allied Powers may be stated, in round numbers, as follows.

To England, immediate . . .	$1,000,000	
convention, 4 per cent interest	5,000,000	
bondholders, 3 per cent interest	65,000,000	
general claims . . .	4,000,000	
		$75,000,000
To France, immediate	500,000	
convention, balance, immediate	200,000	
Pennand agreement . . .	800,000	
claims, general . . .	3,500,000	
		5,000,000
To Spain, immediate	500,000	
convention, 3 per cent interest	8,000,000	
claims	1,500,000	
		10,000,000
Total		$90,000,000

Of course, payment or guaranty of this large mass on our part is out of the question; nor was it contemplated by the United States in the original instructions to Mr

Corwin. It was proposed to make such payment as would afford present relief to Mexico, and secure the forbearance of the Allied Powers. To this end, Mr. Seward offered to assume the interest of the Mexican debt for the term of five years. But the unfunded claims in the foregoing list, entitled "immediate," it is understood, are pressed with equal energy by the Allied Powers. If these were satisfied, and provision made for the interest, the United States would have the following liabilities.

Payments, immediate, or at 3, 6, and 12 months, as follows.

To England, 3, 6, and 12 months' drafts of Mexico on United States	$1,000,000
To France, 3, 6, and 12 months' drafts of Mexico on United States	700,000
To Spain, 3, 6, and 12 months' drafts of Mexico on United States	500,000
Total cash, or 3, 6, and 12 months	$2,200,000

Interest, in semi-annual drafts of Mexico on the United States.

To England, convention, 4 per cent	$200,000	
bondholders, 3 per cent	1,950,000	
		$2,150,000
To Spain, convention, 3 per cent		240,000
Total interest, per annum		$2,390,000

Other outstanding claims of the Allied Powers are not included in either of these lists. It is proposed that these should be provided for by a sinking fund, at the rate of 10 per cent a year for ten years, as follows.

To England	$400,000
To France	80,000
To France	350,000
To Spain	150,000
Total, per annum	$980,000

The assumption of all these liabilities for a long period would throw upon the United States a burden too great for the present moment, although, perhaps, not out of proportion to the anticipated advantages. If anything be done on our part, it must be more moderate. The offer of Mr. Seward for five years, if accepted, would devolve upon the United States a responsibility sufficiently large; and this responsibility ought to be kept within a limitation, of which $15,000,000 should be a maximum.

But there are two conditions to be required by the United States, before the assumption of any such responsibility. The first is the assent of the Allied Powers, and the acceptance on their part of the friendly offers proposed. Unless the Allied Powers are parties to the transaction, it would be productive only of embarrassment and loss, without accomplishing any permanent good to the United States or to Mexico.

The other essential condition is, that security should be given by Mexico for the liabilities assumed. It is not too much to expect such security; nor is Mexico, as is well known, disinclined to give it. Her creditors are now foreclosing their demands, at the cost, perhaps, of her national existence, and she turns to the United States for help. Not merely friendship, but a continental policy, affecting our own cherished interests, prompts us to afford such help, so far as in our power. In asking for security, we simply follow the rules of prudence, whether between individuals or nations.

The security proposed by Mr. Corwin on the public lands, minerals, and Church property of Mexico, would require the appointment of a board or mixed commission for the management and disposition of this

property. This necessity adds to the complications of such security.

The security proposed by Mr. Seward, on the public lands and mineral rights in the several provinces of Lower California, Chihuahua, Sonora, and Cinaloa, is simple, and it is understood that in some of this territory there is vast mineral wealth. The province of Lower California is unquestionably the territory of Mexico most interesting to the United States in a military and naval point of view.

Another security, perhaps less manageable, but more interesting still, would be the right of way across the Isthmus of Tehuantepec, with a mortgage on the adjoining public lands of the Isthmus. Estimated by its pecuniary value, this security would not be large; but there can be no doubt of its political and commercial value.

Still another security would be a pledge by Mexico of 25 per cent, or perhaps a larger percentage, of the customs or other revenues.

It is not easy to say positively, at this distance from the scene of operations, and with the information before the Committee, what is the most practicable form of security. Perhaps it is advisable to leave the matter to the careful discretion of our minister at Mexico, under instructions from the President, with the explicit understanding that the United States decline any territorial acquisition, and seek the consolidation of Mexico, without dismemberment of any kind.

Such are the main features of the question on which the President has asked the advice of the Senate. With more precise information on the matters involved, it might be proper for the Senate to enter upon details

in its answer. But such information, especially with regard to actual relations, now daily changing, between Mexico and the Allied Powers, can be obtained only on the spot. It is evident, therefore, that the Senate can do little more than indicate an opinion on what has already been done, and declare the proper principles on which a negotiation with Mexico should be conducted, without presuming to fix in advance all its terms. Much must be left to the discretion of our minister there, and to the instructions he will receive from the President.

The Committee recommend the passage of the following resolution.

"*Resolved*, That, in the changing condition of the relations between Mexico and the Allied Powers, and in the absence of precise information, it is impossible for the Senate to advise the President with regard to all the terms of a treaty with Mexico, so as to supersede the exercise of considerable discretion on the part of our Minister there, under instructions from the President, but that, in answer to the two several Messages of the President, the Senate expresses the following conclusions.

First. The Senate approves the terms of the instructions to our Minister at Mexico contained in the despatch bearing date September 2, 1861.

Secondly. The Senate does not advise a treaty in conformity with the project communicated by our Minister to Mexico in his despatch of November 29, 1861, as the same fails to secure in any way the application of the money to the demands of the Allied Powers, or either of them, and therefore can be in no respect satisfactory to them.

Thirdly. The Senate advises a treaty with Mexico providing for the assumption of the interest on the debt from

Mexico to the Allied Powers during a limited period of time, and also for the payment of certain immediate claims by these Powers, the whole liability to be kept within the smallest possible sum ; it being understood that the same shall be accepted by the Allied Powers in present satisfaction of their claims, so that they shall withdraw from Mexico.[1] And it shall be secured by such mortgage or pledge as is most practicable, without any territorial acquisition or dismemberment of Mexico.

The Resolution reported by the Committee was amended in the Senate by striking out all after the word "*Resolved,*" and inserting in lieu thereof as follows : "That, in reply to the two several Messages of the President with regard to a treaty with Mexico, the Senate express the opinion that it is not advisable to negotiate a treaty that will require the United States to assume any portion of the principal or interest of the debt of Mexico, or that will require the concurrence of European powers."

[1] In the Report as printed by the Senate this clause was omitted by a mistake of the copyist.

NO RECOGNITION OF THE FUGITIVE SLAVE BILL.

Motion and Remarks in the Senate, February 25, 1862.

February 25th, the Senate having under consideration a bill, reported by Mr. Trumbull, of Illinois, to confiscate the property and free the slaves of Rebels, an incidental question arose on the recognition of the Fugitive Slave Bill, when Mr. Sumner spoke as follows.

I DESIRE to move an amendment, which I believe will carry out the idea of the Senator from Kansas. I concur with that Senator in all he has said in relation to the Fugitive Slave Bill. I have never called it a law, hardly an act. I regard it simply as a bill, still a bill, having no authority under the Constitution. There is no unsoundness in that instrument out of which such excrescence can grow. That is my idea; I believe it is the idea of the Senator from Kansas. Therefore I concur with him in any criticism upon legislation seeming even in the most indirect way to recognize the existence of a thing which can have, thank God, under the Constitution, when properly interpreted, no legal existence. Therefore, if the language introduced in this bill has the effect which the Senator supposes, if it does in any way recognize the existence of that bill, certainly I am against it; and when I listened to the remarks of the Senator, and critically examined the language, I must say I feared that there was some implication or other on our part in favor of that bill. I there-

fore propose an amendment which shall remove all such implication or possibility of recognition on our part, while, at the same time, I believe it will carry out completely, adequately, in every respect, the idea of the Senator from Illinois in the measure now under consideration. The language here is as follows.

"And whenever any person claiming to be entitled to the service or labor of any other person shall seek to enforce such claim, he shall, in the first instance, and before *any order for the surrender of the person whose service is claimed, establish not only his title to such service, as now provided by law, but also* that he is, and has been, during the existing Rebellion, loyal to the Government of the United States."

I propose to strike out all after the word "before," in the sixteenth line, down to the word "that," in the nineteenth line, being these words, —

"any order for the surrender of the person whose service is claimed, establish not only his title to such service, as now provided by law, but also" —

and instead thereof insert —

"proceeding with the trial of his claim, satisfactorily prove" —

so that the sentence will read, —

"he shall, in the first instance, and before proceeding with the trial of his claim, satisfactorily prove that he is, and has been, during the existing Rebellion, loyal to the Government of the United States."

This language, as I believe, carries out completely the idea of the Senator from Illinois in the measure before us. I think it also carries out the idea of the Senator from Kansas. It gives all proper efficacy to the language

of the statute; at the same time it does not compromise any of us, in this age of Christian light, by a new recognition, direct or indirect, of the Fugitive Slave Bill.

MR. COWAN. How long will that provision last?

MR. SUMNER. As long as this statute lasts.

MR. COWAN. Then a person claiming one hundred years from this time would open his cause by showing that he was loyal during this Rebellion!

MR. SUMNER. I hope so, certainly, — forever.

The amendment was agreed to. The bill never became a law. Another bill on the same subject from the House of Representatives was adopted, with the following title, "To suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the property of Rebels, and for other purposes," and approved by the President, July 17, 1862.[1]

[1] Statutes at Large, Vol. XII. p. 589.

OUR GERMAN FELLOW-CITIZENS, AND A TRUE RECONSTRUCTION.

LETTER TO THE GERMAN REPUBLICAN CENTRAL COMMITTEE OF NEW YORK, FEBRUARY 25, 1862.

MR. SUMNER'S letter is in reply to the following resolutions, communicated to him by the Secretary of the Committee.

"The German Republican Central Committee of the City and County of New York, at their regular monthly meeting, held at head-quarters, February 14th, 1862, unanimously

"*Resolved*, That the thanks of this Committee are hereby tendered to the Hon. Charles Sumner, United States Senator from Massachusetts, for the 'Resolutions declaratory of the relations between the United States and the territory once occupied by certain States, and now usurped by pretended Governments without constitutional or legal right,' introduced by him into the United States Senate.

"*Resolved*, That we consider these Resolutions as embodying sound constitutional doctrine, conclusive logical argumentation, and the only true basis upon which the Union can be permanently reconstructed."

SENATE CHAMBER, February 25, 1862.

SIR, — I have had the honor to receive the Resolutions unanimously adopted by the German Republican Central Committee of New York, declaring their adhesion to certain principles presented by me to the Senate on the relation between the United States and the territory once occupied by certain States, and now usurped by pretended Governments without constitutional or legal right.

I pray you to let the Committee know my gratitude for the prompt and generous support they have given to

these principles. Our German fellow-citizens, throughout the long contest with Slavery, have not only been earnest and true, but have always seen the great question in its just character and importance. Without them our cause would not have triumphed at the last Presidential election. It is only natural, therefore, that they should continue to guard and advance this cause.

Where so many hesitate and fail, it is most gratifying to find a Committee so distinguished as yours ready again to enter into the contest for Human Rights.

Accept the assurance of the respect with which I have the honor to be, Sir,

Faithfully yours,

CHARLES SUMNER.

WM. M. WERMERSKIRCH, Esq.,
Corresponding Secretary of the German Republican Central Committee, New York.

STATE SUICIDE AND EMANCIPATION.

LETTER TO A PUBLIC MEETING AT THE COOPER INSTITUTE, NEW YORK, MARCH 6, 1862.

THIS meeting was in pursuance of the following call.

"All citizens of New York who rejoice in the downfall of treason, and are in favor of sustaining the National Government in the most energetic exercise of all the rights and powers of war, in the prosecution of its purpose to destroy the cause of such treason, and to recover the territories heretofore occupied by certain States recently overturned and wholly subverted as members of the Federal Union by a hostile and traitorous power calling itself 'The Confederate States,' and *all who concur in the conviction that said traitorous power, instead of achieving the destruction of the Nation, has thereby only destroyed Slavery*, and that it is now the sacred duty of the National Government, as the only means of securing permanent peace, national unity and well-being, to provide against its restoration, and *to establish in said territories Democratic Institutions founded upon the principles of the Great Declaration*, 'That all MEN are created equal, endowed by their Creator with the unalienable rights of Life, Liberty, and the pursuit of Happiness,' are requested to meet at the Cooper Institute, on the sixth day of March, at eight o'clock, P. M., to express to the President and Congress their views as to the measures proper to be adopted in the existing emergency."

On the day of this great meeting the President communicated to Congress his Message on Compensated Emancipation, which was his first public step in the transcendent cause.

The President of the meeting was Hon. James A. Hamilton, the venerable son of Alexander Hamilton, who agreed with Mr. Sumner in regard to the death of Slavery and the power of Congress. There was also a distinguished list of Vice-Presidents, with George Bancroft at the head. There were letters from Preston King, Senator of New York, Henry Wilson, Senator of Massachusetts, David Wilmot, Senator of Pennsylvania, George W. Julian, Representative in Congress from Indiana, and from Mr. Sumner. Among the orators were the Presi-

dent of the meeting, Mr. Martin F. Conway, Representative in Congress from Kansas, and Carl Schurz, who had recently returned from his Spanish mission.

The report in the *New York Tribune* has the caption, "The Suicide of Slavery. — New York for a Free Republic."

Mr. Sumner's letter was a vindication of his Resolutions.

SENATE CHAMBER, March 5, 1862.

DEAR SIR, — Never, except when suffering from positive disability, have I allowed myself to be absent from my seat in the Senate for a single day, and now, amid the extraordinary duties of the present session, I am more than ever bound by this inflexible rule. If anything could tempt me to depart from it, I should find apology in the invitation with which you honor me.

The meeting called under such distinguished auspices is needed at this moment as a rally to those true principles by which alone this great Rebellion can be permanently suppressed. I should be truly happy to take part in it, and try to impart something of the strength of my own convictions.

It is only necessary that people should see things as they are, and they will easily see how to deal with them. This is the obvious condition of practical action. Now, beyond all question, Slavery is the great original malefactor and omnipresent traitor, — more deadly to the Union than all Rebel leaders, civil or military. Therefore, as you are in earnest against the Rebellion, you will not spare Slavery. And happily the way is plain, so that it cannot be mistaken.

Look throughout the whole Rebel territory, and you do not find a single officer legally qualified to discharge any function of Government. By the Consti-

tution of the United States, "members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution." But these functionaries have all renounced allegiance to the United States, and taken a new oath to support the Rebel Government, so that at this moment they cannot be recognized as constitutionally empowered to act. But a State is known only through its functionaries, constitutionally empowered to act; and since all these have ceased to exist, the State, with its unnatural institutions, has ceased to exist also, or it exists only in the lifeless parchments by which its Government was originally established. The action of these functionaries was impotent to transfer its territory to a pretended confederation. To destroy the State was all they could do.

In the absence of any legitimate authority in this territory, Congress must assume the necessary jurisdiction. Not to do so is abandonment of urgent duty. Some propose a temporary military government; others propose a temporary provisional government, with limited powers. These all concede to Congress jurisdiction over the territory; nor can such jurisdiction be justly questioned. But I cannot doubt that it is better to follow the authoritative precedents of our history, and proceed as Congress is accustomed to proceed in the organization and government of other territories. This is simple.

And as to Slavery, if there be any doubt that it died constitutionally and legally with the State from which it drew its malignant breath, it might be prohibited by the enactment of that same Jeffersonian ordinance which

originally established Freedom throughout the great Northwest.

Accept my thanks for the honor you have done me, and believe me, dear Sir,

Faithfully yours,

CHARLES SUMNER.

Among the resolutions adopted at the meeting was one calling for the overthrow of Slavery, — "because the supreme jurisdiction of the National Constitution over all the territories now occupied by the Rebel States must be held to be exclusive of the traitorous Rebel authorities therein established, by virtue of which alone Slavery now therein exists, and that wherever the Constitution has exclusive jurisdiction it ordains Liberty and not Slavery."

These were forwarded to Mr. Sumner by one of the secretaries, with the following letter.

"I hand herewith a copy of Resolutions adopted, amid the wildest enthusiasm, and without a breath of dissent, by an assembly of some three thousand of our prominent citizens, last evening, at the Cooper Institute Mass Meeting. No such audience has been convened in this city (except only the Union Square meeting of last April) since your address in July, 1860. Nor has so demonstrative a gathering been seen here since that time. I say this to give you an idea of the character and popularity of the affair. I hand the Resolutions to you *for personal presentation to the President* (and to *Congress*, if your views are not opposed to such a course), preferring to secure their reaching the President through you as a medium of communication."

Mr. Sumner had pleasure in presenting them to the President.

REMOVAL OF DISQUALIFICATION OF COLOR IN CARRYING THE MAILS.

BILL IN THE SENATE, MARCH 18, 1862, AND INCIDENTS.

MARCH 18, 1862, Mr. Sumner asked, and by unanimous consent obtained, leave to introduce a bill to remove all disqualification of color in carrying the mails, which was read twice by its title and referred to the Committee on Post-Offices and Post-Roads.

The bill in its operative words was as follows.

THAT, from and after the passage of this Act, no person, by reason of color, shall be disqualified from employment in carrying the mails; and all Acts and parts of Acts establishing such disqualification, including especially the seventh section of the Act of March 3, 1825, are hereby repealed.

March 27th, the bill was reported to the Senate by Mr. Collamer, of Vermont, Chairman of the Committee, without amendment.

The existing law was as follows: —

"That no other than a free white person shall be employed in conveying the mail, and any contractor who shall employ or permit any other than a free white person to convey the mail shall for every such offence incur a penalty of twenty dollars."[1]

This passed the Senate March 1, 1825, and the House March 2, without a division. The first suggestion of this measure was as early as 1802, by Gideon Granger, Postmaster-General, in a communication addressed to Hon. James Jackson, Senator from Georgia, which, it will be seen, was private in character.

[1] Statutes at Large, Vol. IV. p. 104.

"General Post-Office, March 23, 1802.

"Sir, — An objection exists against employing negroes, or people of color, in transporting the public mails, of a nature too delicate to ingraft into a report which may become public, yet too important to be omitted or passed over without full consideration. I therefore take the liberty of making to the Committee, through you, a private representation on that subject. . . . .

"Everything which tends to increase their knowledge of natural rights, of men and things, or that affords them an opportunity of associating, acquiring, and communicating sentiments, and of establishing a chain or line of intelligence, must increase your hazard, because it increases their means of effecting their object.

"The most active and intelligent are employed as post-riders. These are the most ready to learn and the most able to execute. By travelling from day to day, and hourly mixing with people, they must, they will, acquire information. *They will learn that a man's rights do not depend on his color. They will in time become teachers to their brethren.* They become acquainted with each other on the line. Whenever the body, or a portion of them, wish to act, they are an organized corps, circulating our intelligence openly, their own privately."[1]

This communication, which Mr. Sumner laid before the Committee, was the argument on which he relied.

April 11th, the bill was considered in the Senate, on motion of Mr. Sumner, and passed without amendment or debate: Yeas 24, Nays 11.

A correspondent of the *Boston Journal* remarked at the time: —

"This is the first time, within the recollection of your correspondent, that any bill having the negro in it, directly or indirectly, has been passed by the Senate without debate. What a good time is coming, when the negro questions shall all have been legislated upon, and when the African race will no longer be a bone of contention in our legislative halls!"

The bill was less fortunate in the House of Representatives, where, May 20th, Mr. Colfax, of Indiana, reported it from the Post-Office Committee with the recommendation that it do not pass. In explaining the reasons for this report, he referred to the original Act of Congress establishing the disqualification, and said: —

"That law has been on the statute-book for more than a third of a century. Among all the petitions presented during that time to this House and the Senate, from people in all sections of the country, there has not been, so far as I have been able to discover, a single petition from any person, white

[1] American State Papers, Post-Office Department, p. 27. See also McPherson's Political History of the Rebellion, p. 239, note.

or black, male or female, asking for a repeal or modification of this law. It has remained there by common consent until the present time; and therefore I think it unwise and inexpedient to pass the bill at the present time, not being demanded by public opinion.

"In the second place, the repeal of this bill does not affect exclusively the blacks of the country, as generally supposed. It will throw open the business of mail-contracting, and of thus becoming officers of the Post-Office Department, not only to blacks, but also to the Indian tribes, civilized and uncivilized, and to the Chinese, who have come in such large numbers to the Pacific coast. . . . .

"By this bill, if it is to pass, you would allow all over the South the employment by the slaveholder of his slaves to carry the mail, and to receive compensation for the labor of such slaves out of the Federal Treasury. By the present law not a dollar is ever paid out of the Post-Office Treasury to any slaveholder for the labor of his slave. . . . .

"Mr. Speaker, I am furthermore authorized by the Postmaster-General to say that he has not recommended the passage of this bill, nor does he regard it as promotive of the interests of the Department. I cannot find that it is asked for by any official or private citizen throughout the length and breadth of this land."

To these objections he added, that it was necessary to have testimony by which you can convict mail depredators; and "in some of the States Indians and negroes, and in California and Oregon the Chinese also, are not allowed by the statutes of the State to give testimony in the courts against white persons."

Mr. Dawes, of Massachusetts, inquired of Mr. Colfax, "whether he supposes depredators upon the mails are tried in the State courts, or whether they are tried in the United States courts, and if the latter, whether he and I do not make the laws of the United States and the courts of the United States, prescribing who shall testify and who shall not?"

"Mr. Colfax. Not being a lawyer, and not understanding, therefore, all the rules which govern the proceedings of the courts, I, however, say that I am informed by those who are lawyers that the rules of evidence in force in the States respectively are adopted by the United States courts in such States. And the gentleman from Massachusetts, who is a lawyer, ought to have known the fact, and, knowing it, ought not to have asked me such a question.

"Mr. Dawes. The gentleman from Indiana has not quite answered me."[1]

Mr. Colfax moved to lay the bill on the table, which was ordered, May 21st: Yeas 82, Nays 45. So the bill was lost.

[1] Congressional Globe, 37th Cong. 2d Sess., pp. 2231, 2232.

In the next Congress it was again introduced by Mr. Sumner.

A letter from William C. Nell, of Boston, well known for his volume on "The Colored Patriots of the Revolution," shows how a single individual suffered under this discrimination of color.

"Please accept my sincere thanks for your efforts to remove the disqualification of color in mail-carrying.

"Mr. Phillips conveyed to me the substance of information imparted by you, to wit, the postponement of the bill in the House. To me the disappointment is heavy, presuming said action to be a finality, at least for this session, and the next one is not likely to be as liberal.

"I never had more desire or more need of chances to earn money than now, and never were my opportunities so small."

The existing law was general, and Mr. Nell could not be a letter-carrier in Boston.

RANSOM OF SLAVES

AT THE NATIONAL CAPITAL.

SPEECH IN THE SENATE, ON THE BILL FOR THE ABOLITION OF SLAVERY IN THE DISTRICT OF COLUMBIA, MARCH 31, 1862.

And I will very gladly spend and be spent for you.
ST. PAUL, 2 *Corinthians*, XII. 15.

Ornatus sacramentorum redemtio captivorum est.
ST. AMBROSE, *De Officiis Ministrorum*, Lib. II. Cap. 28.

Thy ransom paid, which man from death redeems.
MILTON, *Paradise Lost*, Book XII. 424.

Let me observe, fellow-citizens, that this enterprise of unparalleled magnitude and importance, the extirpation of Slavery from the face of the earth, of which the Abolition of Slavery throughout this Union is the principal branch, and the Abolition of Slavery in the District of Columbia a minute ramification, is an effort to purify and redeem the human race from the sorest evil with which they are afflicted in the mortal stage of their existence. — John Quincy Adams, *Speech at Bridgewater, Mass., November* 6, 1844.

In activity against Slavery Mr. Sumner did not confine himself to public effort. By writing and personal appeal he was always doing. The letter to Governor Andrew, already given,[1] not only shows his exertion in that important quarter, but affords a glimpse of his relations with the President, whom he reports as saying that there was a difference between them of a month or six weeks only. In point of fact, Mr. Sumner found the difference much greater.

On his arrival at Washington, previously to the opening of Congress, he lost no time in seeing the President, who read to him the draught of his Annual Message. Mr. Sumner was disheartened by the absence of any recommendation or statement on Emancipation, and especially by what the President told him of his striking from Mr. Cameron's Report a strong passage on this subject. But he was entirely satisfied that the President was really against Slavery, and was determined to do his duty. From that time Mr. Sumner saw him constantly, never missing an opportunity of pressing action. Not a week passed without one or more interviews. At the same time, Mr. Chase was pressing, also, and the two interchanged reports with regard to his state of mind. During this time he was watching the Border States, and communicating with friends in Kentucky. For Mr. Sumner this was an anxious period.

At last, early in the morning of March 6th, he received a request from the President to come to him as soon as convenient after breakfast. Mr. Sumner hastened, and on his arrival the President said that he had something to read; and he then read the draught of the Special Message of that date, proposing Compensated Emancipation.

Mr. Sumner never had strong faith in the practicability of Compensated Emancipation on a large scale, and was always against Gradual Emancipation; but he welcomed any step towards Emancipation, being assured, that, when once begun in any way, it must proceed to the complete establishment of Freedom. In the conversation that ensued he began with a mild protest against gradualism in dealing with wrong, but said nothing against compensation. Taking the draught into his hands, and reading it over slowly and carefully, he could not but object to a certain brief paragraph, which he thought might be turned against us by the other side, and he asked permission to rewrite it, so

[1] *Ante*, p. 152.

as to remove the ground of possible objection. While occupied in this attempt with his pencil, the President said: "Don't trouble yourself; I will strike it all out": and it was struck out. As Mr. Sumner continued for some time studying the paper, the President at length interrupted him in a familiar, pleasant way, saying: "Enough; you must go, or the boys[1] won't have time to copy it." He then said that he should communicate the Message to the Senate that day. It was communicated accordingly.

Before he left, Mr. Sumner told the President, that, though knowing that the Message was coming, he should stand aside and leave to others the making of the proper motion with regard to it. As he anticipated, nothing was ever done under it beyond the adoption by the two Houses of the joint resolution recommended: "That the United States ought to coöperate with any State which may adopt *gradual* abolishment of Slavery, giving to such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconveniences, public and private, produced by such change of system." But the Message gave public assurance that the President was occupied with the great question, and its concluding words sank into the popular heart. "In full view," he said, "of my great responsibility to my God and to my country, I earnestly beg the attention of Congress and the people to the subject." Many breathed freer.

Meanwhile a bill was introduced into the Senate by Mr. Wilson, providing for Emancipation in the District of Columbia. This was entitled, "For the release of certain persons held to service or labor in the District of Columbia." It provided for a commission to appraise the claims on account of the slaves liberated, limiting their allowance in the aggregate to an amount equal to three hundred dollars a slave, and appropriated one million dollars to pay loyal owners; to which was added, on motion of Mr. Doolittle, one hundred thousand dollars for the colonization of slaves who desired to emigrate to Hayti or Liberia.

This bill was introduced December 16th, referred to the Committee on the District of Columbia December 20th, reported with amendments by Mr. Morrill of Maine February 13th, taken up for consideration March 12th, and proceeded with to its final passage April 3d: Yeas 29, Nays 14.

April 11th, it passed the House: Yeas 94, Nays 44.

April 16th, it was approved by the President, who sent a Message expressing gratification that "the two principles of compensation and colonization are both recognized and practically applied in the Act."[2]

[1] His private Secretaries, John G. Nicolay and John Hay.

[2] Congressional Globe, 37th Cong. 2d Sess., p. 1680.

In the interval between the passage of the bill and its approval by the President there was concern with many lest it should fail in his hands. During this painful suspense, Mr. Sumner visited the President, and said: "Do you know who at this moment is the largest slave-*holder* in this country? It is Abraham Lincoln; for he holds all the three thousand slaves of the District, which is more than any other person in the country holds." He then expressed astonishment that the President could postpone the approval a single night.

Mr. Sumner spoke, March 31st, treating the case as of ransom rather than compensation. He was willing to vote money for Emancipation, but would not recognize the title of the master implied in compensation. The distinction facilitated a bolder dealing with the question, which was needed in the Rebel States.

This method was noticed especially by the *New York Tribune*.

"The speech of Mr. Sumner in the Senate on the Bill for the Abolition of Slavery in the District of Columbia is a statesmanlike view of the subject, which should commend it to the impartial consideration of the country. He addressed himself, not to a discussion of the character of Slavery itself, but simply to its recognition in the national capital, and advocates its removal because it is not in accordance with the Constitution. On this point his reasoning is conclusive, and is an appeal to the national self-respect which ought not to be disregarded. Not less forcible is the ground he takes on the question of compensation. Viewing it rather in the light of ransom for the slave than compensation to the master for a right surrendered, he upholds it as a duty springing from the complicity of the whole country in the existence heretofore of the system in the domain exclusively under national jurisdiction. Common sense and a sense of justice to all parties alike commend such a treatment of the subject."

Lewis Tappan, the early and most watchful Abolitionist, wrote from New York: —

"I have just read the speech again in pamphlet form. Your able efforts in procuring the passage of this bill add another link to the golden chain by which you are bound to the good people of my native State, and, as I believe, to posterity."

Orestes A. Brownson, able and indefatigable with his pen, recognized the idea of ransom.

"I thank you for your able speech on the Ransom of the Slaves in the District of Columbia. The term *Ransom* is happily chosen, and meets many scruples."

Frederick Douglass wrote with the effusion of a freeman once a slave.

"I want only a moment of your time to give you my thanks for your great speech in the Senate on the Bill for the Abolition of Slavery in the District of Columbia. I trust I am not dreaming; but the events taking place seem like a dream. If Slavery is really dead in the District of Columbia, and merely waiting for the ceremony of 'Dust to dust' by the President, to you more than to any other American statesman belongs the honor of this great triumph of justice, liberty, and sound policy. I rejoice for my freed brothers, — and, Sir, I rejoice for you. You have lived to strike down in Washington the power that lifted the bludgeon against your own free voice. I take nothing from the good and brave men who have coöperated with you. There is, or ought to be, a head to every body; and whether you will or not, the slaveholder and the slave look to you as the best embodiment of the Antislavery idea now in the councils of the nation. May God sustain you!"

The speech, while addressed to the particular circumstances of the District of Columbia, presented considerations applicable to Slavery everywhere. It was a blow at Slavery outside the District, as well as inside, while it illustrated the power and duty of Congress over this subject.

SPEECH.

Before Mr. Sumner began, Mr. Davis, of Kentucky, read the following interrogatories.

"It may be that the speech which the honorable Senator intends to pronounce may cover the points which I have embodied in some questions to him. If not, I should take it very kindly, if the honorable Senator will answer the questions. I will read them.

"1. Are slaves in the District of Columbia, and in the slaveholding States, legally the subject of property?

"2. Has Congress the power to deprive the owners of lands and houses and lots situated in the District of Columbia of that property?

"3. What law or laws give the owners of real estate in the District of Columbia their right to such property? Inform us where such law or laws may be found and read.

"4. What law or laws give a different right and title to slaves and to real estate? Where can such law or laws be found?

"5. Is or not the Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, the supreme law of the land, which all persons, without any exception whatever, are bound to obey?

"6. Is or not the Supreme Court of the United States the proper and final tribunal to judge and determine all questions, whether in law or equity, under the Constitution and laws of the United States?"

The answers to these interrogatories, so far as they bear on the main question, will be found in the course of the speech.

MR. PRESIDENT, — With unspeakable delight I hail this measure and the prospect of its speedy adoption. Though only a small instalment of that great debt to an enslaved race which we all owe, yet will it be recognized in history as a victory of humanity. At

home, throughout our own country, it will be welcomed with gratitude, while abroad it will quicken the hopes of all who love Freedom. Liberal institutions will gain everywhere by the abolition of Slavery at the national capital. Nobody can read that slaves were once sold in the markets of Rome, beneath the eyes of the Sovereign Pontiff, without confessing the scandal to religion, even in a barbarous age; and nobody can hear that slaves are now sold in the markets of Washington, beneath the eyes of the President, without confessing the scandal to liberal institutions. For the sake of the national name, if not for the sake of justice, let the scandal cease.

In early discussions of this question many topics were introduced that obtain little attention now. It was part of the tactics of Slavery to claim absolute immunity. Indeed, without such immunity it had small chance to exist. Such a wrong, so utterly outrageous, could find safety only where protected from inquiry. Therefore Slave-Masters always insisted that petitions against its maintenance at the national capital were not to be received, that it was unconstitutional to touch it even here within the exclusive jurisdiction of Congress, and that, if it were touched, it should be only under the auspices of the neighboring States of Virginia and Maryland. On these points elaborate arguments were constructed, useless to consider now. Whatever the opinions of individual Senators, the judgment of the country is fixed. The right of petition, first vindicated by the matchless perseverance of John Quincy Adams, is now beyond question, and the constitutional power of Congress is hardly less free from doubt. It is enough to say on this point, that, if

Congress cannot abolish Slavery here, then there is no power anywhere to abolish it here, and this wrong will endure always, lasting as the capital itself.

As the moment of justice approaches, we are called to meet a different objection, inspired by generous sentiments. It is urged, that, since there can be no such thing as property in man, especially within the exclusive jurisdiction of Congress, therefore all held as slaves at the national capital are justly entitled to freedom without price or compensation of any kind, — or, at least, that any money paid should be distributed according to an account stated between master and slave. If this question were determined according to divine justice, so far as we may be permitted to contemplate such a judgment, it is obvious that nothing can be due to the master, and that any money paid belongs rather to the slave, who for generations has been despoiled of every right and possession. If we undertake to audit this fearful account, pray what sum shall be allowed for the prolonged torments of the lash? what treasure shall be voted to the slave for wife ravished from his side, for children stolen, for knowledge shut out, and for all the fruits of labor wrested from him and his fathers? No such account can be stated. It is impossible. Once begin the inquiry, and all must go to the slave. It only remains for Congress, anxious to secure this great boon, and unwilling to embarrass or jeopard it, to act practically, according to its finite powers, in the light of existing usage, and even existing prejudice, under which these odious relations have assumed the form of law; nor can we hesitate at any forbearance or sacrifice, provided Freedom is established without delay.

Testimony and eloquence have been accumulated against Slavery; but on this occasion I shall confine myself precisely to the argument for the ransom of slaves at the National Capital; although such is Slavery that it is impossible to consider it in any single aspect without confronting its whole many-sided wickedness, while the broad, diversified field of remedy is naturally open to review. At some other time the great question of emancipation in the States may be more fitly considered, together with those other questions where the Senator from Wisconsin [Mr. DOOLITTLE] has allowed himself to take sides so earnestly, — whether there is an essential incompatibility between the two races, so that they cannot live together except as master and slave? and whether the freedmen shall be encouraged to exile themselves to other lands, or rather continue their labor here at home? Enough for the present to consider Slavery at the National Capital. And here we are met by two inquiries, so frankly addressed to the Senate by the clear-headed Senator from Kansas [Mr. POMEROY]: first, *Has Slavery any constitutional existence at the national capital?* and, secondly, *Shall money be paid to secure its abolition?* The answer to these two inquiries will make our duty clear. If Slavery has no constitutional existence here, then more than ever is Congress bound to interfere, even with money; for the scandal must be peremptorily stopped, without any postponement, or any consultation of the people on a point which is not within their power.

It may be said, that, whether Slavery be constitutional or not, nevertheless it exists, and therefore this inquiry is superfluous. True, it exists as a MON-

STROUS FACT; but it is none the less important to consider its origin, that we may understand how, assuming the form of law, it was able to shelter itself beneath the protecting shield of the Constitution. When we see clearly that it is without any such just protection, that the law which declares it is baseless, and that in all its pretensions it is essentially and utterly brutal and unnatural, we shall have less consideration for the Slave Tyranny, which, in satisfied pride, has thus far — not without compunction at different moments — ruled the national capital, reducing all things here, public opinion, social life, and even the administration of justice, to its own degraded standard, so as to fulfil the curious words of an old English poet: —

> "It serves, yet reigns as King;
> It lives, yet 's death; it pleases, full of paine.
> Monster! ah, who, who can thy beeing faigne,
> Thou shapelesse shape, live death, paine pleasing, servile raigne?" [1]

It is true, there can be no such thing as property in man: and here I begin to answer the questions propounded by the Senator from Kentucky [Mr. DAVIS]. If this pretension is recognized anywhere, it is only another instance of custom, which is so powerful as to render the idolater insensible to the wickedness of idolatry, and the cannibal insensible to the brutality of cannibalism. To argue against such a pretension seems to be vain; for the pretension exists in open defiance of reason as well as of humanity. It will not yield to argument; nor will it yield to persuasion. It must be encountered by authority. It was not the planters in the British islands or in the French islands who organized emancipation, but the distant governments across

[1] P. Fletcher, The Locusts or Apollyonists, Canto I. st. 10.

the sea, far removed from local prejudice, which at last forbade the outrage. Had these planters been left to themselves, they would have clung to the pretension, as men among us still cling to it. In making this declaration against the idea of property in man, I say nothing new. An honored predecessor of the Senator from Maryland [Mr. KENNEDY], whose fame as a statesman was eclipsed, perhaps, by his more remarkable fame as a lawyer, — I mean William Pinkney, and it is among the recollections of my youth that I heard Chief Justice Marshall call him the undoubted head of the American bar, — in a speech before the Maryland House of Delegates, spoke as statesman and lawyer, when he said: —

"Sir, by the eternal principles of natural justice no master in the State has a right to hold his slave in bondage for a single hour." [1]

And Henry Brougham spoke not only as statesman and lawyer, but as orator also, when, in the British Parliament, he uttered these memorable words: —

"Tell me not of rights, talk not of the property of the planter in his slaves. I deny the right, I acknowledge not the property. The principles, the feelings, of our common nature rise in rebellion against it. Be the appeal made to the understanding or to the heart, the sentence is the same that rejects it. In vain you tell me of laws that sanction such a claim. There is a law above all the enactments of human codes, — the same throughout the world, the same in all times: . . . . it is the law written on the heart of man by the finger of his Maker; and by that law, unchangeable and eternal, while men despise fraud and loathe

[1] Speech on Manumission, 1788: American Museum, July, 1789, Vol. VI. p. 75.

rapine and abhor blood, they will reject with indignation the wild and guilty fantasy that man can hold property in man."[1]

It has been sometimes said that the finest sentence of the English language is that famous description of Law with which Hooker closes the first book of his "Ecclesiastical Polity"; but I cannot doubt that this wonderful denunciation of an irrational and inhuman pretension will be remembered hereafter with higher praise; for it gathers into surpassing eloquence the waking and immitigable instincts of Universal Man.

If I enter now into analysis of Slavery, and say familiar things, it is because such exposition is an essential link in the present inquiry. Looking carefully at Slavery as it is, we find that it is not merely a single gross pretension, utterly inadmissible, but an aggregation of gross pretensions, all and each utterly inadmissible. They are five in number: first, the pretension of property in man; secondly, the denial of the marriage relation, — for slaves are "coupled" only, and not married; thirdly, the denial of the paternal relation; fourthly, the denial of instruction; and, fifthly, the appropriation of all the labor of the slave and its fruits by the master. Such are the five essential elements which we find in Slavery; and this fivefold barbarism, so utterly indefensible in every point, is maintained for the single purpose of compelling labor without wages. Of course such a pretension is founded in force, and nothing else. It begins with the kidnapper in Guinea or Congo, traverses the sea with the pirate slave-trader in his crowded hold, and is continued here by virtue of laws representing and embodying

[1] Speech on Negro Slavery, July 13, 1830. Works, Vol. X. p. 216.

the same brutal force that prevailed in the kidnapper and the pirate slave-trader. Slavery, wherever it exists, is the triumph of force, sometimes in the strong arm of an individual, and sometimes in the strong arm of law, but in principle always the same. Depending upon force, he is master who happens to be stronger, — so that, if the slave were stronger, he would be master, and the master would be slave. Beyond all doubt, according to reason and justice, every slave possesses the same right to enslave his master that his master possesses to enslave him. If this simple statement of unquestionable principles needed confirmation, it would be found in the solemn judgments of courts. Here, for instance, are the often quoted words of Mr. Justice McLean, of the Supreme Court of the United States: "Slavery is admitted by almost all who have examined the subject to be founded in wrong, in oppression, in *power* against *right*."[1] And here are the words of the Supreme Court of North Carolina: "Such services [of a slave] can only be expected from one who has no will of his own, who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of *uncontrolled authority over the body*. There is nothing else which can operate to produce the effect."[2] And the Supreme Court of the United States, by the lips of Chief Justice Marshall, has openly declared, in a famous case, read the other day by the Senator from Kentucky [Mr. DAVIS], that "Slavery has its origin in *force*."[3] Thus does it appear by most authoritative words, that this monstrous Barbarism is

[1] Jones *v.* Vanzandt, 2 McLean, R., 603.
[2] The State *v.* Mann, 2 Devereux, R., 266.
[3] The Antelope, 10 Wheaton, R., 121.

derived not from reason, or nature, or justice, or goodness, but from *force*, and nothing else.

Here in the national capital, under the exclusive jurisdiction of Congress, the FORCE which now maintains this unnatural system is supplied by Congress. Without Congress the "uncontrolled authority" of the master would cease. Without Congress the master would not be master, nor would the slave be slave. Congress, then, in existing legislation, is the power behind, which enslaves our fellow-men. Therefore does it behoove Congress, by proper, instant action, to relieve itself of this painful responsibility.

The responsibility becomes more painful, when it is considered that Slavery exists at the national capital absolutely without support of any kind in the Constitution: and here again I answer the Senator from Kentucky [Mr. DAVIS]. Nor is this all. Situated within the exclusive jurisdiction of the Constitution, where State rights cannot prevail, it exists in open defiance of most cherished principles. Let the Constitution be rightly interpreted by a just tribunal, and Slavery must cease here at once. The decision of a court would be as potent as an Act of Congress. And now, as I confidently assert this conclusion, which bears so directly on the present question, pardon me, if I express the satisfaction with which I recur to an earlier period, shortly after I entered the Senate, when, vindicating the principle now accepted, but then disowned, that *Freedom and not Slavery is National*, I insisted upon its application to Slavery everywhere within the exclusive jurisdiction of the Constitution, and declared that Congress might as well undertake to make a king as to make a slave.[1]

[1] Speech in the Senate, August 26, 1852: *ante*, Vol. III. pp. 126, 127.

That argument has never been answered; it cannot be answered. Nor can I forget that this same conclusion, having such important bearings, was maintained by Mr. Chase, while a member of this body, in that masterly effort where he unfolded the relations of the National Government to Slavery,[1] and also by the late Horace Mann, in a most eloquent and exhaustive speech in the other House, where no point is left untouched to show that Slavery in the national capital is an *outlaw*.[2] Among all the speeches in the protracted discussion of Slavery, I know none more worthy of profound study than those two, so different in character and yet so harmonious in result. If authority could add to irresistible argument, it would be found in the well-known opinion of the late Mr. Justice McLean, in a published letter, declaring the constitutional impossibility of Slavery in the National Territories, because, in the absence of express power under the Constitution to establish or recognize Slavery, there was nothing for the breath of Slavery, as respiration could not exist where there was no atmosphere. The learned judge was right, and his illustration was felicitous. Although applied at the time only to the Territories, it is of equal force everywhere within the exclusive jurisdiction of Congress; for within such jurisdiction there is no atmosphere in which Slavery can live.

If this question were less important, I should not occupy time with its discussion. But we may learn to detest Slavery still more, when we see how completely it instals itself here in utter disregard of the Consti-

[1] Speech in the Senate, March 26, 27, 1850: Congressional Globe, 31st Cong. 1st Sess., Appendix, pp. 468 – 480.

[2] Speech in the House of Representatives, February 23, 1849: Ibid., 30th Cong. 2d Sess., Appendix, pp. 318 – 326.

tution, compelling Congress ignobly to do its bidding. The bare existence of such a barbarous injustice in the metropolis of a Republic gloriously declaring that "all men are entitled to life, liberty, and the pursuit of happiness," is a mockery which may excite surprise; but when we bring it to the touchstone of the Constitution, and consider the action of Congress, surprise is deepened into indignation.

How, Sir, was this foothold secured? When and by what process did the National Government, solemnly pledged to Freedom, undertake to maintain the Slave-Master here in the exercise of that *force* or "unrestrained power" which swings the lash, fastens the chain, robs the wages, sells the child, and tears the wife from the husband? A brief inquiry will show historically how it occurred: and here again I answer the Senator from Kentucky.

The sessions of the Revolutionary Congress were held, according to the exigencies of war or the convenience of members, at Philadelphia, Baltimore, Lancaster, York, Princeton, Annapolis, Trenton, and New York. An insult at Philadelphia from a band of mutineers caused an adjournment to Princeton, in 1783, which was followed by the discussion, from time to time, of the question of a permanent seat of government. On the 7th of October, 1783, a motion was made by Mr. Gerry, of Massachusetts, "That buildings for the use of Congress be erected on the banks of the Delaware, near Trenton, or of the Potomac, near Georgetown, provided a suitable district can be procured on one of the rivers as aforesaid for a federal town, and that the right of soil, and an exclusive or such other jurisdiction as Congress may direct,

shall be vested in the United States."[1] Thus did the first proposition of a national capital within the exclusive jurisdiction of Congress proceed from a representative of Massachusetts. The subject of Slavery at that time attracted little attention; but at a later day, in the Constitutional Convention, this same honored representative showed the nature of the jurisdiction which he would claim, according to the following record: "Mr. Gerry thought we had nothing to do with the conduct of the States as to slaves, *but ought to be careful not to give any sanction to it.*"[2] In these words will be found our own cherished principle, *Freedom National, Slavery Sectional,* expressed with homely and sententious simplicity. There is something grateful and most suggestive in the language employed, "we ought to be careful not to give any sanction to it." In the first Congress under the Constitution, the same representative, during the debate on the Slave-Trade, gave further expression to this same conviction, when he said that "he highly commended the part the Society of Friends had taken; it was the cause of humanity they had interested themselves in."[3]

The proposition of Mr. Gerry in reference to a national capital, after assuming various forms, subsided. But in 1785 three commissioners were appointed "to lay out a district of not less than two nor exceeding three miles square, on the banks of either side of the Delaware, not more than eight miles above or below the lower falls thereof, for a federal town."[4] At the

[1] Journal of Congress, Vol. VIII. p. 419.

[2] Debates in the Federal Convention, August 22, 1787: Madison Papers, p. 1394.

[3] Annals of Congress, 1st. Cong. 2d Sess., col. 1189.

[4] Journal of Congress, Vol. X. pp. 29, 50, 52.

Congress which met at New York two years later, unsuccessful efforts were made to substitute the Potomac for the Delaware. The commissioners, though appointed, never entered upon their business. At last, by the adoption of the Constitution, the subject was presented in a new form, under the following clause: "The Congress shall have power to exercise exclusive legislation, in all cases whatsoever, over such district, not exceeding ten miles square, as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States." From the records of the Convention it does not appear that this clause occasioned debate. But it broke out in the earliest Congress. Virginia and Maryland, each, by acts of their respective Legislatures, tendered the ten miles square, while similar propositions were made by citizens of Pennsylvania and New Jersey. After long and animated discussion, Germantown, in Pennsylvania, was on the point of being adopted, when the subject was postponed till the next session. Havre de Grace and Wright's Ferry, both on the Susquehanna, Baltimore, on the Patapsco, and Connogocheague, on the Potomac, divided opinions. In the course of the debate, Mr. Gerry, who had first proposed the Potomac, now opposed it. He pronounced it highly unreasonable to fix the seat of government where nine States out of the thirteen would be to the northward, and adverted to the sacrifice the Northern States were ready to make in going as far south as Baltimore. An agreement seemed impossible, when the South suddenly achieved one of those political triumphs by which its predominance in the National Government was established.

Pending at this time was the great and trying propo-

sition to assume the State debts, which, being at first defeated through Southern votes, was at last carried by a "compromise," according to which the seat of government was placed on the Potomac, thus settling the much vexed question. Mr. Jefferson, in a familiar account, thus sketches the "compromise."

"It was observed that this pill [the assumption of the State debts] would be peculiarly bitter to the Southern States, *and that some concomitant measure should be adopted to sweeten it a little to them.* There had before been propositions to fix the seat of government either at Philadelphia or at Georgetown on the Potomac, and it was thought that by giving it to Philadelphia for ten years, and to Georgetown permanently afterwards, this might, as an anodyne, calm in some degree the ferment which might be excited by the other measure alone. So two of the Potomac members (White and Lee, but White with a revulsion of stomach almost convulsive) agreed to change their votes, and Hamilton undertook to carry the other point."[1]

Such was one of the earliest victories of Slavery in the name of "Compromise." It is difficult to estimate the evil consequences thus entailed upon the country.

The bill establishing the seat of government, having already passed the Senate, was adopted by the House of Representatives, after vehement debate and many calls of the yeas and nays, by a vote of thirty-two to twenty-nine, on the 9th of July, 1790. A district of territory, not exceeding ten miles square, on the river Potomac, was accepted for the permanent seat of the Government of the United States: "*Provided, nevertheless,* that the operation of the laws of the State within such district shall not be affected by this acceptance, until the time

[1] Introduction to the Anas: Jefferson's Writings, Vol. IX. p. 94.

fixed for the removal of the Government thereto, *and until Congress shall otherwise by law provide.*" [1] Here, it will be seen, was a positive saving of the laws of the States for a limited period, so far as Congress had power to save them, within the exclusive jurisdiction of the Constitution; but there was also complete recognition of the power of Congress to change these laws, and an implied promise to assume the "exclusive legislation in all cases whatsoever" contemplated by the Constitution.

In response to this Act of Congress, Maryland, by formal act, ceded the territory now constituting the District of Columbia "in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon,"—provided that the jurisdiction of Maryland "shall not cease or determine, *until Congress shall by law provide for the government thereof.*" [2]

In pursuance of this contract between the United States of the one part and Maryland of the other part, expressed in solemn statutes, the present seat of government was occupied in November, 1800, when Congress proceeded to assume that complete jurisdiction conferred in the Constitution, by enacting, on the 27th of February, 1801, "that the laws of the State of Maryland, *as they now exist*, shall be and continue in force in that part of the said District which was ceded by that State to the United States, and by them accepted for the permanent seat of government." [3] Thus at one stroke all existing laws of Maryland were adopted by Congress in gross, and from that time forward became the laws of the United States at the national capital. Although known

[1] United States Statutes at Large, Vol. I. p. 130.
[2] Laws of Maryland, 1791, Ch. XLIV. sec. 2.
[3] United States Statutes at Large, Vol. II. pp. 104, 105.

historically as laws of Maryland, they ceased at once to be laws of that State, for they draw their vitality from Congress alone, under the Constitution of the United States, as completely as if every statute had been solemnly reënacted. And now we see precisely how Slavery obtained its foothold.

Among the statutes of Maryland thus solemnly reenacted in gross was the following, originally passed as early as 1715, in colonial days.

"All negroes and other slaves already imported or hereafter to be imported into this province, and all children now born or hereafter to be born of such negroes and slaves, shall be slaves during their natural lives."[1]

Slavery cannot exist without barbarous laws in its support. Maryland, accordingly, in the spirit of Slavery, added other provisions, also reënacted by Congress in the same general bundle, of which the following is an example.

"*No negro or mulatto slave*, free negro or mulatto born of a white woman, during his time of servitude by law, ... *shall be admitted and received as good and valid evidence in law, in any matter* or thing whatsoever depending before any court of record or before any magistrate within this province, *wherein any Christian white person is concerned.*"[2]

At a later day the following kindred provision was added, in season to be reënacted by Congress in the same code.

"No slave manumitted agreeably to the laws of this State . . . . shall be entitled . . . . to give evidence against any

[1] Laws of Maryland, 1715, Ch. XLIV. sec. 22.
[2] Ibid., 1717, Ch. XIII. sec. 2.

white person, or shall be recorded as competent evidence to manumit any slave petitioning for freedom." [1]

And such is the law for Slavery at the national capital.

It will be observed that the original statute which undertakes to create Slavery in Maryland does not attaint the blood beyond two generations. It is confined to "all negroes and other slaves," and their "children," "during their natural lives." These are slaves, but none others, unless a familiar rule of interpretation is reversed, and such words are extended rather than restrained. And yet it is by virtue of this colonial statute, with all its ancillary barbarism, adopted by Congress, that slaves are still held at the national capital. It is true that at the time of its adoption there were few slaves here to whom it was applicable. For ten years previous, the present area of Washington, according to received tradition, contained hardly five hundred inhabitants, all told, and these were for the most part laborers distributed in houses merely for temporary accommodation. But all these musty, antediluvian, wicked statutes, of which you have seen a specimen, took their place at once in the national legislation, and under their supposed authority slaves multiplied, and Slavery became a national institution. And it now continues only by virtue of this Slave Code borrowed from early colonial days, which, though flagrantly inconsistent with the Constitution, has never yet been repudiated by Court or Congress.

I have said that this Slave Code, even assuming it applicable to slaves beyond the "natural lives" of two

[1] Laws of Maryland, 1796, Ch. LXVII. sec. 5.

generations, is flagrantly inconsistent with the Constitution. On this point the argument is so plain that it may be shown like a diagram.

Under the Constitution, Congress has "exclusive legislation in all cases whatsoever" at the national capital. The cession by Maryland was without condition, and the acceptance by Congress was also without condition; so that the territory fell at once within this exclusive jurisdiction. But Congress can exercise no power except in conformity with the Constitution. Its exclusive jurisdiction in all cases whatsoever is controlled and limited by the Constitution, out of which it is derived. Now, looking at the Constitution, we find, first, that there are no words authorizing Congress to establish or recognize Slavery, and, secondly, that there are positive words which prohibit Congress from the exercise of any such power. The argument, therefore, is twofold: first, from the absence of authority, and, secondly, from positive prohibition.

Of course, a barbarism like Slavery, having its origin in force and nothing else, can have no legal or constitutional support except from positive sanction. It can spring from no doubtful phrase. It must be declared by unambiguous words, incapable of a double sense. Here I repeat an argument which I have presented before, when on other occasions arraigning the pretensions of Slavery under the Constitution, but which, so long as Slavery claims immunity, cannot be allowed to drop out of sight. It begins with the great words of Lord Mansfield, who, in the memorable case of Somerset, said: "The state of Slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by *positive law*. . . . It is

so odious that nothing can be suffered to support it but POSITIVE LAW."[1] This principle has been adopted by tribunals even in slaveholding States.[2] But I do not stop to dwell on these authorities. Even the language, "exclusive legislation in all cases whatsoever," cannot be made to sanction Slavery. It wants those positive words, leaving nothing to implication, which are obviously required, especially when we consider the professed object of the Constitution, as declared in its Preamble, to "establish justice and secure the blessings of liberty." There is no power in the Constitution to make a king, or, thank God, to make a slave; and the absence of all such power is hardly more clear in one case than in the other. The word *king* nowhere occurs in the Constitution, nor does the word *slave*. But if there be no such power, then all Acts of Congress sustaining Slavery at the national capital must be unconstitutional and void. The stream cannot rise higher than the fountain head; nay, more, *nothing can come out of nothing;* and if there be nothing in the Constitution authorizing Congress to make a slave, there can be nothing valid in any subordinate legislation. It is a pretension which has thus far prevailed simply because Slavery predominated over Congress and courts.

To all who insist that Congress may sustain Slavery in the national capital I put the question, Where in the Constitution is the power found? If you cannot show where, do not assert the power. So hideous an effrontery must be authorized in unmistakable words. But where are the words? In what article, clause, or line? They cannot be found. I challenge their pro-

[1] Howell's State Trials, Vol. XX. col. 82.

[2] See Harry *v.* Decker, Walker, Mississippi R., 42; Rankin *v.* Lydia, 2 A. K. Marshall, Kentucky R., 470.

duction. Insult not human nature by pretending that its most cherished rights can be sacrificed without solemn authority. Remember that every presumption and every leaning must be in favor of Freedom and against Slavery. Remember, too, that no nice interpretation, no strained construction, no fancied deduction, can suffice to sanction the enslavement of our fellow-men. And do not degrade the Constitution by foisting upon its blameless text the idea of property in man. It is not there; and if you think you see it there, it is simply because you make the Constitution a reflection of yourself.

A single illustration will show the absurdity of this pretension. If, under the clause giving to Congress "exclusive legislation" at the national capital, Slavery may be established, and under these words Congress is empowered to create slaves instead of citizens, then, under the same words, it may do the same thing in the "forts, magazines, arsenals, dock-yards, and other needful buildings" belonging to the United States, wherever situated, for these are all placed within the same "exclusive legislation." The extensive navy-yard at Charlestown, in the very shadow of Bunker Hill, may be filled with slaves, with enforced toil to take the place of that cheerful, well-paid labor whose busy hum is the best music of the place. Such an act, however consistent with slaveholding tyranny, would not be regarded as constitutional at Bunker Hill.

If there were any doubt on this point, and the absence of all authority were not perfectly clear, the prohibitions of the Constitution would settle the question. It is true that Congress has "exclusive legislation" within the District; but the prohibitions to grant titles of nobility, to pass *ex post facto* laws, to pass bills of at-

tainder, and to establish religion, are unquestionable limitations of this power. There is also another limitation, equally unquestionable. It is found in an Amendment proposed by the First Congress, on the recommendation of several States, as follows: —

"No PERSON shall be deprived of life, LIBERTY, or property, without *due process of law*."

This prohibition, according to the Supreme Court, is obligatory on Congress.[1] It is also applicable to all claimed as slaves; for, in the eye of the Constitution, every human being within its sphere, whether Caucasian, Indian, or African, from the President to the slave, is a *person*. Of this there is no question. But a remarkable incident of history confirms the conclusion. As originally recommended by Virginia, North Carolina, and Rhode Island, this proposition was restricted to the *freeman*. Its language was, —

"No *freeman* ought to be deprived of his life, *liberty*, or property, but by the law of the land."[2]

Of course, if the word *freeman* had been adopted, this clause would be restricted in its effective power. Deliberately rejecting this limitation, the authors of the Amendment recorded their purpose that no *person*, within the national jurisdiction, of whatever character, shall be deprived of *liberty* without due process of law. The latter words are borrowed from Magna Charta, and they mean without due presentment, indictment, or other judicial proceedings. But Congress, undertaking to support Slavery at the national capital, enacts that

1 Barron *v.* Baltimore, 7 Peters, R., 243.
2 Elliot's Debates, II. 484, III. 211, IV. 223.

persons may be deprived of liberty there without any presentment, indictment, or other judicial proceedings. Therefore every *person* now detained as a slave in the national capital is detained in violation of the Constitution. Not only is his liberty taken without due process of law, but, since he is tyrannically despoiled of all the fruits of his industry, his property also is taken without due process of law. You talk sometimes of guaranties of the Constitution. Here is an unmistakable guaranty, and I hold you to it.

Bringing the argument together, the conclusion may be briefly stated. The five-headed barbarism of Slavery, beginning in violence, can have no legal or constitutional existence, unless through positive words expressly authorizing it. As no such positive words are found in the Constitution, all legislation by Congress supporting Slavery must be unconstitutional and void, while it is made still further impossible by positive words of prohibition guarding the liberty of every *person* within the exclusive jurisdiction of Congress.

A court properly inspired, and ready to assume that just responsibility which dignifies judicial tribunals, would at once declare Slavery impossible at the national capital, and set every slave free, — as Lord Mansfield declared Slavery impossible in England, and set every slave free. The two cases are parallel; but, alas! the court is wanting here. The legality of Slavery in England was affirmed in professional opinions by the ablest lawyers; it was also affirmed on the bench. England was a Slave State, and even its newspapers were disfigured with advertisements for the sale of human beings, while the merchants of London, backed by great names in the law, sustained the outrage. Then

appeared Granville Sharp, the philanthropist, who, pained by the sight of Slavery, and especially shocked by the brutality of a slave-hunt in the streets of London, was aroused to question its constitutionality in England. For two years he devoted himself to anxious study of the British Constitution in all its multifarious records. His conclusion is expressed in these precise words: "The word *slaves*, or anything that can justify the enslaving of others, is not to be found there, God be thanked!" [1] Thus encouraged, he persevered. By his generous exertions the negro Somerset, claimed as a slave by a Virginia gentleman then in London, was defended, and the Court of King's Bench compelled to that immortal judgment by which Slavery was forever expelled from England, and the early boast of the British Constitution became a practical verity. More than fourteen thousand persons, held as slaves on British soil — four times as many as are now found in the national capital — became instantly free, without price or ransom.

The good work that our courts thus far decline remains to be done by Congress. Slavery, which is a scandalous anomaly and anachronism here, must be made to disappear from the national capital, — if not in one way, then in another. A judgment of court would be simply on the question of constitutional right, without regard to policy. But there is no consideration of right or of policy, from the loftiest principle to the humblest expediency, which may not properly enter into the conclusion of Congress. The former might be the triumph of the magistrate, — the latter must be that of the statesman. But whether from magis-

[1] Hoare's Memoirs of Sharp, p. 38.

trate or from statesman, it will constitute an epoch in history.

But the question is asked, Shall we vote money for this purpose? I cannot hesitate. Two considerations are with me prevailing. First, the relation of master and slave at the national capital has from the beginning been established and maintained by Congress everywhere in sight, and even directly under its own eyes. The master held the slave; but Congress, with strong arm, stood behind the master, looking on and sustaining. Not a dollar of wages has been taken, not a child stolen, not a wife torn from her husband, without the hand of Congress. If not partnership, there is complicity on the part of Congress, through which the whole country has become responsible for the manifold wrong. Though always protesting against its continuance, and laboring earnestly for its removal, yet gladly do I accept my share of the prospective burden. And, secondly, even if not all involved in the manifold wrong, nothing is clearer than that the mode proposed is the gentlest, quietest, and surest in which the beneficent change can be accomplished. It is therefore the most practical. It recognizes Slavery as an existing fact, and provides for its removal. And when I think of the unquestionable good we seek, of all its great advantages, of the national capital redeemed, of the national character elevated, and of the righteous example we shall set, and when I think, still further, that, according to a rule alike of jurisprudence and morals, *Liberty is priceless*, I cannot hesitate at any appropriation within our means by which all these things of incalculable value can be promptly secured.

As I find no reason of policy adverse to such appropriation, so do I find no objection in the Constitution. I am aware that it is sometimes asked, Where in the Constitution is the power to make such appropriation? But nothing is clearer than that, under the words conferring "exclusive legislation in all cases whatsoever," Congress may create freemen, although it may not create slaves. And of course it may exercise all the powers necessary to this end, whether by a simple act of emancipation or a vote of money. If there could be any doubt on this point, it would be removed, when we reflect that the abolition of Slavery, with all the natural incidents of such an act, has been constantly recognized as within the sphere of legislation. It was so regarded by Washington, who, in a generous letter to Lafayette, dated May 10, 1786, said: "It certainly might and assuredly ought to be effected, and that, too, by *legislative* authority."[1] Through legislative authority Slavery has been abolished in State after State of our Union, and also in foreign countries. I have yet to learn that the power of Congress for this purpose at the national capital is less complete than that of any other legislative body within its own jurisdiction.

But, while not doubting the power of Congress in any of its incidents, I prefer to consider the money we pay as in the nature of *ransom* rather than *compensation*, so that Freedom shall be *acquired* rather than *purchased*; and I place it at once under the sanction of that commanding charity proclaimed by prophets and enjoined by apostles, which all history recognizes and the Constitution cannot impair. From time immemorial every

[1] Writings, ed. Sparks, Vol. IX. p. 164.

Government has undertaken to ransom from captivity, and sometimes a whole people has felt the general resources well bestowed in the ransom of its prince. Religion and humanity have both concurred in this duty as more than usually sacred. "The ransom of captives is a great and excellent office of justice," exclaims one of the early Fathers. And the pious St. Ambrose insisted upon breaking up even the sacred vessels of the Church, saying: "The ornament of the sacraments is the redemption of captives."

Among the most beautiful incidents of the early Church is that of St. Ambrose. There had been hesitation, but the divine Emancipationist broke forth: "What! you will not sell the vessels of gold, and you leave for sale the living vessels of the Lord! The ornament of the sacraments is the redemption of captives. Let the cup ransom from the enemy him whom the blood ransoms from sin."[1] Happily, this spirit prevailed. At the report of Christians compelled to wear out their days as captives in Algiers, Tunis, or Morocco, or, it might be, among the Moors of Spain or the merchants of Genoa and Venice, it assumed practical form. Two Frenchmen, Jean de Matha and Pierre Nolasque, born on the coast of the Mediterranean, conceived the idea of a special order vowed to the redemption of Christian slaves. The first founded, in 1199, the order of the Holy Trinity, known often as Mathurins; the second, acting under the patronage of Spain, founded the order of Our Lady of Mercy. Upon both these orders Bishops and Popes bestowed approbation and encouragement, while, for more than six centuries, they devoted themselves to this Christian charity, often, ac-

[1] S. Ambrosius, De Officiis Ministrorum, Lib. II. c. 28.

cording to the vow assumed, giving themselves as hostages for the ransomed captive. It is related, that, in 1655, the Order of Mercy in Algiers alone ransomed more than twelve thousand slaves, leaving in pledge a large number of its members, faithful to the vow, "*In Saracenorum potestate in pignus, si necesse fuerit ad redemptionem Christi fidelium, detentus manebo.*" Thus did these pious fathers give not only money, but themselves.[1]

The duty thus commended has been exercised by the United States under important circumstances, with the coöperation of the best names of our history, so as to be beyond question. The instance may not be familiar, but it is decisive, while, from beginning to end, it is full of instruction.

Who has not heard of the Barbary States, and of the pretension put forth by them to enslave white Christians? Algiers was the chief seat of this enormity, which, through the insensibility or incapacity of Christian States, was allowed to continue for generations. Good men and great men were degraded to be captives, while many, neglected by fortune, perished in barbarous Slavery. Even in our colonial days, there were Americans whose fate, while in the hands of these slave-masters, excited general sympathy. Only by ransom was their freedom obtained. Perhaps no condition was more calculated to arouse indignant rage. And yet the disposition so common to palliate Slavery in the National Capital showed itself with regard to Slavery in Algiers; and, indeed, the same arguments to soften public opinion have been employed in the two instances. The parallel is so complete, that I require all your trust

[1] Cochin, L'Abolition de l'Esclavage, Tom. II. pp. 437–439.

to believe that what I read is not an apology for Slavery here. Thus, a member of a diplomatic mission from England, who visited Morocco in 1785, says of the Slavery which he saw: "It is very slightly inflicted"; and "as to any labor undergone, it does not deserve the name."[1] And another earlier traveller, after describing the comfortable condition of the white slaves, adds, in words to which we are accustomed: "I am sure we saw several captives who lived much better in Barbary than ever they did in their own country. . . . . Whatever money in charity was ever sent them by their friends in Europe was their own. . . . . And yet this is called insupportable slavery among Turks and Moors! But we found this, as well as many other things in this country, strangely misrepresented."[2] A more recent French writer asserts, with a vehemence to which we are habituated from the partisans of Slavery among us, that the white slaves at Algiers were not exposed to the miseries which they represented; that they were well clad and well fed, *much better than the free Christians there;* that special care was bestowed upon those who became ill; and that some were allowed such privileges as to become indifferent to freedom, and even to prefer Algiers to their own country.[3] Believe me, Sir, in stating these things I simply follow history; and I refer to the volume and page or chapter of the authorities which I quote, that the careful inquirer may see that they relate to Slavery abroad, and not to Slavery at home. If I continue to unfold this strange, eventful story, it will be to exhibit *the direct and constant intervention of Congress for the*

[1] Keatinge's Travels, p. 250.
[2] Braithwaite's Revolutions in Morocco, p. 353.
[3] Histoire d'Alger (Paris, 1830), Ch. 27.

ransom of slaves; but the story itself is an argument against Slavery, pertinent to the present occasion, which I am not unwilling to adopt.

Scarcely was national independence established, when we were aroused to fresh efforts for the protection of enslaved citizens. Within three years no less than ten American vessels were seized. At one time an apprehension prevailed that Dr. Franklin, on his way home from France, had been captured. "We are waiting," said one of his French correspondents, "with the greatest impatience to hear from you. The newspapers have given us anxiety on your account, for some of them insist that you have been taken by the Algerines, while others pretend that you are at Morocco, enduring your slavery with all the patience of a philosopher."[1] Though this apprehension happily proved without foundation, it soon became known that other Americans, less distinguished, but entitled to all the privileges of new-born citizenship, were suffering in cruel captivity. At once the sentiments of the people were enlisted in their behalf. Newspapers pleaded, while the corsairs were denounced sometimes as "infernal crews," and sometimes as "human harpies." But it was through the stories of victims who had succeeded in escaping from bondage that the people were most aroused. As these fugitive slaves touched our shores, they were welcomed with outspoken sympathy. Glimpses opened through them into the dread regions of Slavery gave a harrowing reality to all that conjecture or imagination had pictured. True, indeed, it was that our own white brethren, entitled like ourselves to all the rights of manhood,

[1] Letter from M. Le Veillard, October 9, 1785: Franklin's Works, ed. Sparks, Vol. X. p. 230.

were degraded in unquestioning obedience to an arbitrary taskmaster, sold at the auction-block, worked like beasts of the field, and galled by the manacle and lash. As the national power seemed yet inadequate to compel their liberation, it was attempted by ransom.

Generous efforts at Algiers were organized under the direction of our minister at Paris, and the famous *Society of Redemption*, having its origin in the thirteenth century, offered aid. Our agents were blandly entertained by the great slave-dealer, the Dey, who informed them that he was familiar with the exploits of Washington, and, as he never expected to set eyes on this hero of Freedom, expressed a hope, that, through Congress, he might receive a full-length portrait of him, to be displayed in the palace at Algiers. Amidst such professions the Dey still clung to his American slaves, holding them at prices beyond the means of the agents, who were not authorized to exceed two hundred dollars a head, — being not unlike in amount that proposed in the present bill; and I beg to call the attention of the Senator from Maine [Mr. MORRILL], who has the bill in charge, to the parallel.

Their redemption engaged the attention of the National Government early after the adoption of the Constitution. It was first brought before Congress by petition, of which we find the following record.

"*Friday, May* 14, 1790. — A petition from sundry citizens of the United States, captured by the Algerines, and now in slavery there, was presented, praying the interposition of Congress in their behalf. Referred to the Secretary of State."[1]

[1] Annals of Congress, 1st Cong. 2d Sess., col. 1572.

An interesting report on the situation of these captives was made to the President by the Secretary of State, December 28, 1790, where he sets forth the efforts for their redemption at such prices as would not "raise the market," — it being regarded as important, that, in "the first instance of a redemption by the United States, our price should be fixed at the lowest point."[1] I quote the precise words of this document, which will be found in the State Papers of the country, and I call special attention to them as applicable to the present moment. Our price should be fixed at the lowest point, and we should do nothing to raise the market. The parallel becomes more complete, when it is known that the white slaves at Algiers were about the same in number with the black slaves at Washington whose redemption is now proposed. The report of Mr. Jefferson was laid before Congress, with the following brief message from the President.

"United States, December 30, 1790.

"*Gentlemen of the Senate and House of Representatives* : —

"I lay before you a report of the Secretary of State on the subject of the citizens of the United States in captivity at Algiers, that you may provide on their behalf what to you shall seem most expedient.

"Geo. Washington."[2]

It does not appear that there was question in any quarter with regard to the power of Congress. The broad recommendation of the President was to provide on behalf of the slaves what should seem most expedient.

Another report from the Secretary of State, entitled

1 American State Papers, Foreign Relations, Vol. I. p. 101.

2 Ibid., p. 100.

"Mediterranean Trade," and communicated to Congress December 30, 1790, relates chiefly to the same matter. In this document are different estimates with regard to the price at which our fellow-citizens might be ransomed and peace purchased. One person, who had long resided at Algiers, put the price at sixty or seventy thousand pounds sterling: this was the lowest estimate. Another, also long, and still, a resident there, said that it could not be less than a million dollars, — which is the sum proposed in the present bill. Mr. Jefferson, after considering the subject at some length, concludes as follows.

"Upon the whole, it rests with Congress to decide between war, tribute, and ransom. . . . . If war, they will consider how far our own resources shall be called forth. . . . . If tribute or ransom, it will rest with them to limit and provide the amount, and with the Executive, observing the same constitutional forms, to make arrangements for employing it to the best advantage." [1]

Among the papers accompanying the report is a letter from Mr. Adams, minister at London, from which I take important words.

"It may be reasonably concluded that this great affair cannot be finished for much less than two hundred thousand pounds sterling." [2]

This is the very sum now needed for our great affair.

In pursuance of these communications, the Senate tendered its advice to the President in a resolution.

"*Resolved*, That the Senate advise and consent that the President of the United States take such measures as he

[1] American State Papers, Foreign Relations, Vol. I. p. 105.
[2] Ibid., p. 106.

may think necessary for the redemption of the citizens of the United States now in captivity at Algiers: *Provided*, The expense shall not exceed forty thousand dollars; and also that measures be taken to confirm the treaty now existing between the United States and the Emperor of Morocco."[1]

In a subsequent message, February 22, 1791, the President said: —

"I will proceed to take measures for the ransom of our citizens in captivity at Algiers, in conformity with your resolution of advice of the first instant, so soon as the moneys necessary shall be appropriated by the Legislature, and shall be in readiness."[2]

The same subject was presented again to the Senate by President Washington, in the following inquiry, May 8, 1792.

"If the President of the United States should conclude a convention or treaty with the Government of Algiers for the ransom of the thirteen Americans in captivity there, for a sum not exceeding forty thousand dollars, all expenses included, will the Senate approve the same? Or is there any, and what, greater or lesser sum which they would fix on as the limit beyond which they would not approve the ransom?"[3]

The Senate promptly replied by a resolution declaring it would approve such treaty of ransom.[4] And Congress, by Act of May 8, 1792, appropriated a sum of fifty thousand dollars for this purpose.[5] Commodore Paul Jones was intrusted with the mission to Algiers, charged with the double duty of making peace and of

[1] American State Papers, Foreign Relations, Vol. I. p. 128.
[2] Ibid.
[3] Ibid., p. 136.
[4] Ibid., p. 136.
[5] Statutes at Large, Vol. I. p. 285.

securing the redemption of our citizens. In his letter of instructions, June 1, 1792, Mr. Jefferson considers the rate of ransom.

"It has been a fixed principle with Congress to establish the rate of ransom of American captives with the Barbary States at as low a point as possible, that it may not be the interest of those States to go in quest of our citizens in preference to those of other countries. Had it not been for the danger it would have brought on the residue of our seamen, by exciting the cupidity of these rovers against them, our citizens now in Algiers would have been long ago redeemed, without regard to price. The mere money for this particular redemption neither has been nor is an object with anybody here."[1]

In the same instructions Mr. Jefferson says: —

"As soon as the ransom is completed, you will be pleased to have the captives well clothed and sent home at the expense of the United States, with as much economy as will consist with their reasonable comfort."[2]

Commodore Paul Jones — called Admiral in the instructions — died without entering upon these duties, and they were afterwards undertaken by Colonel Humphreys, our minister at Lisbon, honored especially with the friendship of Washington, and an accomplished officer of his staff during the Revolution. The terms demanded by the Dey were such as to render the mission unsuccessful.

Meanwhile the Algerines seized other of our citizens, who are described as "employed as captive slaves on the most laborious work, in a distressed and naked situ-

[1] American State Papers, Foreign Relations, Vol. I. pp. 291, 292.
[2] Ibid., p. 292.

ation."[1] One of their number, in a letter to the President, dated at Algiers, November 5, 1793, says: —

"Humanity towards the unfortunate American captives, I presume, will induce your Excellency to coöperate with Congress to adopt some speedy and effectual plan in order to restore to liberty and finally extricate the American captives from their present distresses."[2]

At this time one hundred and nineteen American slaves in Algiers united in a petition to Congress, dated December 29, 1793, where they say: —

"Your petitioners are at present captives in this city of bondage, employed daily on the most laborious work, without any respect to persons. . . . . They pray you will take their unfortunate situation into consideration, and adopt such measures as will restore the American captives to their country, their friends, families, and connections."[3]

The country was now aroused. A general contribution was proposed. People of all classes vied in generous effort. Newspapers entered with increased activity into the work. At public celebrations the toasts, "Happiness for all," and "Universal Liberty," were proposed, partly in sympathy with our wretched white fellow-countrymen in bonds. On one occasion, at a patriotic festival in New Hampshire, they were distinctly remembered in the toast: "Our brethren in slavery at Algiers. May the measures adopted for their redemption be successful, and may they live to rejoice with their friends in the blessings of liberty!"[4] The clergy, too, were en-

[1] Letter from Richard O'Brien to the President of the United States, Algiers, November 5, 1793: American State Papers, Foreign Relations, Vol. I. p. 417.

[2] Ibid., p. 418.

[3] Ibid., p. 421.

[4] Independent Chronicle (Boston), April 9, 1795.

listed. A fervid appeal by the captives themselves was addressed to ministers of the Gospel throughout the United States, asking them to set apart a special Sunday for sermons in behalf of their enslaved brethren. Literature added her influence, not only in essays, but in a work, which, though now forgotten, was among the earliest of the literary productions of our country, reprinted in London at a time when few American books were known abroad. I refer to the story of "The Algerine Captive," which, though published anonymously, like other similar works at a later day, is known to have been written by Royall Tyler, afterwards Chief Justice of Vermont. Slavery in Algiers is here delineated in the sufferings of a single captive, — as Slavery in the United States has been since depicted in the sufferings of "Uncle Tom"; but the argument of the early story was hardly less strong against African Slavery than against White Slavery. "Grant me," says the Algerine captive — who had been a surgeon on board a ship in the African slave-trade — from the depths of his own sorrows, "once more to taste the freedom of my native country, and every moment of my life shall be dedicated to preaching against this detestable commerce. I will fly to our fellow-citizens in the Southern States; I will on my knees conjure them, in the name of humanity, to abolish a traffic which causes it to bleed in every pore. If they are deaf to the pleadings of Nature, I will conjure them, for the sake of consistency, to cease to deprive their fellow-creatures of freedom, which their writers, their orators, Representatives, Senators, and even their Constitutions of Government, have declared to be the unalienable birthright of man."[1]

[1] Algerine Captive, Ch. 32, Vol. I. p. 213.

In such words was the cause of Emancipation pleaded at that early day.

From his distant mission at Lisbon, Colonel Humphreys, yet unable to reach Algiers, joined in this appeal by a letter to the American people, dated July 11, 1794. Taking advantage of the general interest in lotteries, and particularly of the custom, not then condemned, of employing these to obtain money for literary or benevolent purposes, he suggests a grand lottery, sanctioned by the United States, or particular lotteries in individual States, to obtain the means required for the ransom of our countrymen. He then asks: —

"Is there within the limits of these United States an individual who will not cheerfully contribute in proportion to his means to carry it into effect? By the peculiar blessings of freedom which you enjoy, by the disinterested sacrifices you made for its attainment, by the patriotic blood of those martyrs of Liberty who died to secure your independence, and by all the tender ties of Nature, let me conjure you once more to snatch your unfortunate countrymen from fetters, dungeons, and death."

Meanwhile the Government was energetic through all its agents, at home and abroad; nor was any question raised with regard to constitutional powers. In the animated debate which ensued in the House of Representatives, an honorable member said, "If bribery would not do, he should certainly vote for equipping a fleet."[1] At last, by Act of Congress of the 20th March, 1794, a million dollars was appropriated for this purpose, being the identical sum now proposed for a similar purpose of redemption; but it was somewhat masked

[1] Mr. Baldwin, of Georgia, February 6, 1794: Annals of Congress, 3d Cong. 1st Sess., col. 434.

under the language, "to defray any expenses which may be incurred in relation to the intercourse between the United States and foreign nations."[1] On the same day, by another Act, the President was authorized "to borrow, on the credit of the United States, if in his opinion the public service shall require it, a sum not exceeding one million of dollars."[2] The object was distinctly avowed in the instructions of Mr. Jefferson, 28th March, 1795, "for concluding a treaty of peace and liberating our citizens from captivity." In other instructions, 25th August of the preceding year, the wishes of the President are thus conveyed: —

"Ransom and peace are to go hand and hand, if practicable; but if peace cannot be obtained, a ransom is to be effected without delay, ... restricting yourself, on the head of a ransom, within the limit of three thousand dollars per man."[3]

The negotiation being consummated, the first tidings of its success were announced to Congress by President Washington in his speech at the opening of the session, 8th December, 1795.

"With peculiar satisfaction I add, that information has been received from an agent deputed on our part to Algiers, importing that the terms of a treaty with the Dey and Regency of that country had been adjusted in such a manner as to authorize the expectation of a speedy peace, and the restoration of our unfortunate fellow-citizens from a grievous captivity."[4]

The treaty was signed at Algiers, 5th September,

[1] Statutes at Large, Vol. I. p. 345.
[2] Ibid.
[3] American State Papers, Foreign Relations, Vol. I. p. 529.
[4] Ibid., p. 28.

1795. It was a sacrifice of pride, if not of honor, to the necessity of the occasion. Among its stipulations was one even for annual tribute to the barbarous Slave Power.[1] But, amidst all its unquestionable humiliation, it was a treaty of Emancipation; nor did our people consider nicely the terms on which this good was secured. It is recorded that a thrill of joy went through the land on the annunciation that a vessel had left Algiers having on board the Americans who had been captives there. The largess of money, and even the indignity of tribute, were forgotten in gratulations on their new-found happiness. Washington, in his speech to Congress of December 7, 1796, thus solemnly dwelt on their emancipation: —

"After many delays and disappointments, arising out of the European war, the final arrangements for fulfilling the engagements made to the Dey and Regency of Algiers will, in all present appearance, be crowned with success, — but under great, though inevitable, disadvantages in the pecuniary transactions, occasioned by that war, which will render a further provision necessary. *The actual liberation of all our citizens who were prisoners in Algiers, while it gratifies every feeling heart,* is itself an earnest of a satisfactory termination of the whole negotiation."[2]

Other treaties were made with Tripoli and Morocco, and more money was paid for the same object, until at last, in 1801, the slaveholding pretensions of Tripoli compelled a resort to arms. By a document preserved in the State Papers of our country, it appears that from 1791, in the space of ten years, appro-

[1] Statutes at Large, Treaties, Vol. VIII. p. 136.
[2] American State Papers, Foreign Relations, Vol. I. pp. 30, 31.

priations were made for the liberation of our people, reaching to a sum-total of more than two millions of dollars.[1] To all who question the power of Congress, or the policy of exercising it, I commend this account, in its various items, given with authentic minuteness. If we consider the population and resources of the country at the time, as compared with our present gigantic means, the amount will not be deemed inconsiderable.

The pretensions of Tripoli brought out Colonel Humphreys, the former companion of Washington, now at home in retirement. In an address to the public, he called again for united action, saying: —

"Americans of the United States, your fellow-citizens are in fetters! Can there be but one feeling? Where are the gallant remnants of the race who fought for freedom? Where the glorious heirs of their patriotism? *Will there never be a truce between political parties? Or must it forever be the fate of free States, that the soft voice of union should be drowned in the hoarse clamor of discord?* No! Let every friend of blessed humanity and sacred freedom entertain a better hope and confidence."[2]

Then commenced those early deeds by which our arms became known in Europe, — the best achievement of Decatur, and the romantic expedition of Eaton. Three several times Tripoli was attacked; and yet, after successes sometimes mentioned with pride, our country consented by solemn treaty to pay sixty thousand dollars for the freedom of two hundred American slaves, and thus again by money obtained Emancipa-

[1] American State Papers, Foreign Relations, Vol. II. p. 372.

[2] Remarks on the War between the United States and Tripoli: Miscellaneous Works (New York, 1804), p. 73.

tion.[1] But Algiers was governed by Slavery as a ruling passion. Again our people were seized. Even the absorbing contest with Great Britain could not prevent an outbreak of indignant sympathy for those in bonds. A naval force, promptly despatched to the Mediterranean, was sufficient to secure the freedom of the American slaves without ransom, and the further stipulation that hereafter no Americans should be made slaves, and that "any Christians whatsoever, captives in Algiers," making their escape and taking refuge on board an American ship of war, should be safe from all requisition or reclamation.[2] Decatur, on this occasion, showed character as well as courage. The freedmen of his arms were welcomed on board his ship with impatient triumph. Thus, by war, and not by money, was Emancipation this time obtained.

At a later day, Great Britain, weary of tribute and ransom, directed her naval power against the Barbary States. Tunis and Tripoli each promised Abolition, but Algiers sullenly refused, until compelled by irresistible force. Before night, on the 27th August, 1816, the fleet fired, besides shells and rockets, one hundred and eighteen tons of powder and fifty thousand shot, weighing more than five hundred tons. Amidst the crumbling ruins of walls and citadel, the cruel Slave Power was humbled, and by solemn stipulation consented to the surrender of all slaves in Algiers, and the abolition of White Slavery forever. This great triumph was announced by the victorious admiral in a despatch to his Government, where he uses words of rejoicing worthy of the occasion.

[1] Statutes at Large, Treaties, Vol. VIII. p. 214.
[2] Ibid., p. 226.

"In all the vicissitudes of a long life of public service, no circumstance has ever produced on my mind such impressions of gratitude and joy as the event of yesterday. To have been one of the humble instruments in the hands of Divine Providence for bringing to reason a ferocious Government, and destroying forever the insufferable and horrid system of Christian Slavery, can never cease to be a source of delight and heartfelt comfort to every individual happy enough to be employed in it."[1]

And thus ended White Slavery in the Barbary States. A single brief effort of war put an instant close to the wicked pretension. If, in looking back upon its history, we find much to humble our pride, if we are disposed to mourn that the National Government stooped to ransom men justly free without price, yet we cannot fail to gather instruction from this great precedent. Slavery is the same in essential character, wherever it exists, — except, perhaps, that it has received new harshness here among us. There is no argument against its validity at Algiers not equally strong against its validity at Washington. In both cases it is *unjust* FORCE organized into law. But in Algiers it is not known that the law was unconstitutional, as it clearly is here in Washington. In the early case, Slavery was regarded by our fathers only as an existing FACT; and it is only as an existing FACT that it can be regarded by us in the present case; nor is there any power of Congress, generously exerted for those distant captives, which may not be invoked for the captives in our own streets.

Mr. President, if, in this important discussion, which seems to open the door of the future, I confine myself

[1] Osler's Life of Admiral Viscount Exmouth, Appendix, p. 432.

to two simple inquiries, it is because practically they exhaust the whole subject. If Slavery be unconstitutional in the national capital, and if it be a Christian duty, sustained by constitutional examples, to ransom slaves, then your swift desires will not hesitate to adopt the present bill. It is needless to enter upon other questions, important perhaps, but irrelevant. It is needless, also, to consider the objections which Senators have introduced, for all must see that they are but bugbears.

If I seem to dwell on details, it is because they furnish at each stage instruction and support; if I occupy time on a curious passage of history, it is because it is more apt even than curious, while it sometimes holds the mirror up to our own wickedness, and sometimes even seems to cry out, "Thou art the man!" I scorn to argue the obvious truth that the slaves here are as much entitled to freedom as the white slaves that enlisted the early energies of the new-born nation. They are *men* by the grace of God, and this is enough. There is no principle of the Constitution, and no rule of justice, which is not as strong for one as for the other. Consenting to the ransom proposed, you recognize their manhood, and if authority be needed, you find it in the example of Washington, who did not hesitate to employ a golden key to open the house of bondage.

Let this bill pass, and then will be accomplished the first practical triumph of Freedom, for which good men have longed, dying without the sight, — for which a whole generation has petitioned, and for which orators and statesmen have pleaded. Slavery will be banished from the national capital. This metropolis, bearing a venerated name, will be exalted, its evil spirit cast out, its shame removed, its society refined, its courts made

just, its revolting ordinances swept away, and even its loyalty assured. If not moved by justice to the slave, then be willing to act for your own good and in self-defence. If you hesitate to pass this bill for the blacks, then pass it for the whites. Nothing is clearer than that the degradation of Slavery affects the master as well as the slave; while also recent events testify, that, wherever Slavery exists, there Treason lurks, if it does not flaunt. From the beginning of this Rebellion, Slavery has been constantly manifest in the conduct of the masters, and even here in the national capital it is the traitorous power encouraging and strengthening the enemy. This power must be suppressed at every cost; and if its suppression here endangers Slavery elsewhere, there will be new motive for determined action.

Amidst all present solicitudes, the future cannot be doubtful. At the national capital Slavery will give way to Freedom. But the good work will not stop here: it must proceed. What God and Nature decree Rebellion cannot arrest. And as the whole wide-spread tyranny begins to tumble, then, above the din of battle, sounding from the sea and echoing along the land, above even the exultations of victory on hard-fought fields, will ascend voices of gladness and benediction, swelling from generous hearts, wherever civilization bears sway, to commemorate a sacred triumph, whose trophies, instead of tattered banners, are ransomed slaves.

REBEL BARBARITIES, AND THE BARBARISM OF SLAVERY.

Resolution and Remarks in the Senate, April 1, 1862.

Mr. Sumner offered the following resolution, and then spoke upon it.

"*Resolved*, That the Select Committee on the Conduct of the War be directed to collect the evidence with regard to the barbarous treatment by the Rebels at Manassas of the remains of officers and soldiers of the United States killed in battle there, and to report the same to the Senate, with power to send for persons and papers."

MR. PRESIDENT, — We have all been shocked, during the last few days, by the evidence that has accumulated with regard to the treatment of our dead at Manassas.

Instead of those honorable rites which in all ages generous soldiers have been glad to bestow upon enemies fallen in battle, we are disgusted by barbarities reminding us of savage life. Bodies have been dug up, and human bones carried off as trophies. The skull of a gallant Massachusetts soldier has been converted into the drinking-cup of a Georgia colonel, that he may, far away among his slaves, renew the festive barbarism of another age under the name of "The Feast of Skulls."

It is obvious, Sir, that we are now in conflict with beings who belong to a different plane of civilization

from ourselves, and it is important that this unquestionable fact should be made known to the country and to the world.

All familiar with recent events will remember the effect with which that great minister, Cavour, when on the eve of the war for Italian liberation, put forth his circular, setting forth the outrages of the Austrian soldiers on the Italian inhabitants. Through that appeal, Sir, he secured the general sympathy of Europe and of the civilized world. Our cause needs no such document; but I am anxious, nevertheless, for the sake of history, that the record should be made.

Let it be made, also, that the country and mankind may see how Slavery in all its influences is barbarous, — barbarous in peace, barbarous in war, barbarous always, and nothing but barbarism.

On motion of Mr. Howard, the resolution was amended by adding: —

"And that the said Select Committee also inquire into the fact, whether Indian savages have been employed by the Rebels in their military service against the Government of the United States, and how such warfare has been conducted by said savages, and to report the same to the Senate, with power to send for persons and papers."

The resolution as amended was adopted.

April 30, Mr. Wade, Chairman of the Committee, reported particularly on that part of the resolution moved by Mr. Sumner, and the next day the Senate ordered fifty thousand extra copies of the report. Its conclusions appear in the following painful passage.

"The outrages upon the dead will revive the recollections of the cruelties to which savage tribes subject their prisoners. They were buried, in many cases, naked, with their faces downward; they were left to decay in the open air; their bones were carried off as trophies, sometimes, as the testimony proves, to be used as personal adornments; and one witness deliberately avers that the head of one of our most gallant officers was cut off by a Secessionist, to be turned into a drinking-cup on the occasion of his marriage. Monstrous as this revelation may appear to be, your Committee have been informed, that, during the last two weeks, the skull of a Union soldier

has been exhibited in the office of the sergeant-at-arms of the House of Representatives, which had been converted to such a purpose, and which had been found on the person of one of the Rebel prisoners taken in a recent conflict."[1]

The report sustained the allegations of Mr. Sumner, when he moved the inquiry, besides giving new force to the term "The Barbarism of Slavery."

[1] Senate Reports, 37th Cong. 2d Sess., No. 41, p. 10.

TESTIMONY OF COLORED PERSONS IN THE DISTRICT OF COLUMBIA.

Remarks in the Senate, on the Emancipation Bill, April 3, 1862.

MR. PRESIDENT, — In addressing the Senate on this bill, urging the duty of ransom, I exposed an early, inhuman, and wicked statute of Maryland, belonging to that offensive mass originally adopted at the time of the cession as the law of the District, and ever since recognized, although never voted on, and having only a surreptitious authority. I refer to that unjust statute making colored persons incompetent to testify, where a white is a party. I quoted the precise words, still the law of the District.[1] No language of mine is strong enough to express the detestation such a contrivance is calculated to arouse in every bosom not entirely given over to injustice.

The time has come for a change. At least, while providing for the release of those now detained in Slavery, — unconstitutionally, as I hold, — we must see that the proceedings are without embarrassment from that outrageous statute. I propose an amendment, and here I have the consent of my friend, the chairman of the Committee [Mr. Morrill], in the hope of removing this grievance in the inquiries under the bill.

[1] See, *ante*, p. 410

The bill provides for something like a tribunal, as follows: —

"They [the Commissioners] shall have power to subpœna and compel the attendance of witnesses, and to receive testimony and enforce its production, as in civil cases before courts of justice."

Under this provision the old Maryland statute is left in full force. This should not be.

Mr. Sumner moved to add at the end of this clause, immediately after "courts of justice," the words "without the exclusion of any witness on account of color."

Mr. Saulsbury, of Delaware, called for the yeas and nays, which were ordered, and, being taken, resulted, yeas 26, nays 10. So the amendment was agreed to.

This was the first step for the civil rights of colored persons, but it was limited to proceedings under the Emancipation Act in the District of Columbia.

July 7th, the Senate having under consideration a Supplementary Bill on Emancipation in the District, Mr. Sumner took occasion to broaden the immunity by moving the following additional section: —

"*And be it further enacted*, That in all judicial proceedings in the District of Columbia there shall be no exclusion of any witness on account of color."

The yeas and nays were ordered, at the call of Mr. Powell, of Kentucky, and, being taken, resulted, yeas 25, nays 11.

In the House of Representatives, while the bill was under consideration, Mr. Wickliffe, of Kentucky, said: "I have no hope of success; but I feel it to be my duty to move to strike out the words 'without the exclusion of any witness on account of color,' where they occur. . . . . I presume it is intended to let a man's servant come in and swear that he is a disloyal man. I do hope the friends of this bill will not so far outrage the laws of this District as to authorize slaves or free negroes to be witnesses in cases of this kind."

Mr. Thaddeus Stevens said, "I trust that this Committee [of the whole House] will not so far continue an outrage as not to allow any man of credit, whether he be black or white, to be a witness"; and the motion was rejected.[1]

1 Congressional Globe, 37th Cong. 2d Sess., p. 1646, April 11, 1862.

INDEPENDENCE OF HAYTI AND LIBERIA.

SPEECH IN THE SENATE, ON THE BILL TO AUTHORIZE THE APPOINTMENT OF DIPLOMATIC REPRESENTATIVES TO THE REPUBLICS OF HAYTI AND LIBERIA, APRIL 23, 1862.

Thereupon Zeus, fearing for the safety of our race, sent Hermes with self-respect and justice, that their presence among men might establish order and knit together the bonds of friendship in society. "Must I distribute them," said Hermes, "as the various arts have been distributed aforetime, only to certain individuals, or must I dispense them to all?" "*To all*," said Zeus, "*and let all partake of them.*" — PLATO, *Protagoras*, p. 322 C.

Resolved, That the independence of Texas [Hayti and Liberia] ought to be acknowledged by the United States, whenever satisfactory information shall be received that it has in successful operation a civil government capable of performing the duties and fulfilling the obligations of an independent power. — Resolution of the Senate of the United States, *Journal of the Senate*, July 1, 1836.

Resolved, That the State of Texas [Hayti and Liberia] having established and maintained an independent government capable of performing those duties, foreign and domestic, which appertain to independent governments, ... it is expedient and proper, and in conformity with the Laws of Nations and the practice of this Government in like cases, that the independent political existence of said State be acknowledged by the Government of the United States. — Resolution of the Senate of the United States, *Journal of the Senate*, January 12 and March 1, 1837.

Every nation that governs itself, under what form soever, without any dependence on a foreign power, is a sovereign state. Its rights are naturally the same as those of any other state. .... To give a nation a right to make an immediate figure in this grand society, it is sufficient if it be really sovereign and independent; that is, it must govern itself by its own authority and laws. — Vattel, *Law of Nations*, Book I. ch. 1, § 4.

In his Annual Message at the beginning of this session of Congress, December, 1861, the President said: "If any good reason exists why we should persevere longer in withholding our recognition of the independence and sovereignty of Hayti and Liberia, I am unable to discern it. Unwilling, however, to inaugurate a novel policy in regard to them without the approbation of Congress, I submit for your consideration the expediency of an appropriation for maintaining a Chargé d'Affaires near each of those new states. It does not admit of doubt that important commercial advantages might be secured by favorable treaties with them."

Until this recommendation, Hayti and Liberia had borne the ban of the colored race. The National Government, so long as it was ruled by Slavery, could not tolerate a Black Republic. A few extracts exhibit the indecency of the opposition. Mr. Hayne, of South Carolina, announced: "Our policy with regard to Hayti is plain: we never can acknowledge her independence. Let our Government direct all our ministers in South America and Mexico to *protest* against the independence of Hayti." Mr. Hamilton, of South Carolina, declared the sentiments of the Southern people to be, "that Haytien independence is not to be tolerated in any form." Mr. Berrien, of Georgia, said: "Consistently with their own safety, can the people of the South permit the intercourse which would result from establishing relations of any sort with Hayti?" Even Mr. Benton, of Missouri, joined with the rest: "The peace of eleven States in this Union will not permit the fruits of a successful negro insurrection to be exhibited among them."[1] On the presentation of a petition in the House of Representatives, December 18, 1838, praying for the establishment of international relations with the Republic of Hayti, there was an outburst. Mr. Legaré, of South Carolina, known as an accomplished scholar, exclaimed: "The memorial originates in a design to revolutionize the South and to convulse the Union, and ought, therefore, to be rejected with reprobation. As sure as you live, Sir, if this course is permitted to go on, the sun of this Union will go down, — it will go down in blood, and go down to rise no more. I will vote unhesitatingly against nefarious designs like these. They are treason." Mr. Wise, of Vir-

[1] Debates on the Panama Mission, March and April, 1826: Gales and Seaton's Register of Debates in Congress, Vol. II. 166, 291, 330, 2150.

ginia, spoke in the same tone.[1] Such was the prevailing spirit. The time had come for a change.

December 4, 1861, on motion of Mr. Sumner, so much of the President's Message as related to the establishment of diplomatic relations with the Governments of Hayti and Liberia was referred to the Committee on Foreign Relations.

December 9th, on motion of Mr. Sumner, all memorials, resolutions of Legislatures, and other papers on the files of the Senate, relating to the recognition of Hayti and Liberia, were taken from the files and referred to the Committee on Foreign Relations. Mr. Sumner stated, that he wished to reach papers as far back as 1852, — that among these was a very important paper, which at the time passed under the eye of Mr. Webster, from the mercantile interest of New England, strongly in favor of the recognition of Hayti.

The subject was carefully considered in committee.

February 4, 1862, Mr. Sumner reported from the Committee a bill, which was read and passed to a second reading, to authorize the President of the United States to appoint diplomatic representatives to the Republics of Hayti and Liberia respectively, each representative so appointed to be accredited as Commissioner and Consul-General, the representative in Hayti to receive the compensation of Commissioner according to the Act of Congress of August 18, 1856, being $7,500, and the representative in Liberia not more than $4,000.

April 23d, on motion of Mr. Sumner, the Senate proceeded to consider the bill, when Mr. Sumner spoke as follows.

[1] National Intelligencer, December 19 and 21, 1833.

SPEECH.

MR. PRESIDENT, — The independence of Hayti and Liberia has never been acknowledged by our Government down to this day. It is within the province of the President to do this at any time, either by receiving a diplomatic representative or by sending one. The action of Congress is not necessary, except so far as an appropriation is needed to sustain a mission. But the President has seen fit, in his Annual Message, to invite such action. By this bill Congress will associate itself with him in the acknowledgment, which, viewed only as an act of justice, comity, and good neighborhood, must commend itself to all candid minds.

In all respects Hayti and Liberia fulfil the requirements of International Law. Our acknowledgment can raise no question with any foreign power. Independent in fact, and with a civil government in successful operation, these two Republics are entitled to hospitable recognition in the Family of Nations, according to the rule already established by our Government.

In proposing to appoint diplomatic representatives, we necessarily contemplate the negotiation of treaties and the establishment of friendly relations with these two Republics under the sanctions of International Law, and according to the usage of nations. If it be important that such treaties should be negotiated and such

relations be established, then the present bill is entitled to support. Thus far our Government, habitually hospitable to all newly formed republics, has turned aside from Hayti and Liberia, although the former has been an independent power for nearly sixty years, and the latter for nearly fifteen. Our national character has suffered from such conduct, while important commercial relations with these countries have continued without the customary support of treaties or the active protection afforded by the presence of an honored representative. It is time to end this anomalous state of things.

The arguments for the recognition of Hayti loom like her own mountains as the mariner approaches the beautiful island, rising higher and higher, while the head of the last purple peak is lost in the clouds; and the arguments for the recognition of Liberia are not inferior in character.

It was my purpose originally to consider this question in some of its larger aspects, to trace the character and history of the two Republics, to exhibit the struggles in our own country for the acknowledgment of their independence, and to vindicate this act in its manifest relations to civilization. I am happy to believe that such a discussion is unnecessary, and shall therefore content myself with a few considerations exclusively practical in character, and especially in reply to the assertion that diplomatic representatives are not needed in our concerns with these two Republics.

Hayti is one of the most charming and important islands in the world, possessing remarkable advantages in size, situation, climate, soil, productions, and mineral wealth. In length, from east to west, it is about three

hundred and thirty-eight miles; and in breadth, from north to south, it varies from one hundred and forty-five miles to seventeen. Its circumference, without including bays, measures eight hundred and forty-eight miles. Its surface, exclusive of adjacent islands, is estimated at thirty thousand five hundred and twenty-eight square miles,— being about the area of Ireland, and nearly half that of New England. In size it is so considerable as to attract attention among the islands of the world. In situation it is commanding, being at the entrance to the Gulf of Mexico, and within easy reach of all the islands there. In climate it is salubrious, with natural heats tempered by sea-breezes. In soil, it is rich with tropical luxuriance, various with mountains and plains, watered by numerous rivers, and dotted with lakes. In productions it is abundant beyond even the ordinary measure of such favored regions. The mountains yield mahogany, satin-wood, and lignum-vitæ, while the plains supply all the bountiful returns of the tropics, including bananas, oranges, pine-apples, coffee, cacao, sugar, indigo, and cotton. Among the minerals are gold, silver, platinum, mercury, copper, iron, sulphur, and several kinds of precious stones. Such, in brief, is the physical character of this wonderful island, which, like Ireland, is a "gem of the sea."

Originally discovered by Christopher Columbus, who named it Hispaniola, or Little Spain, the island was for a long time among the most valued possessions of Spain, from which power the western portion, known as Hayti, passed to France. Throwing off the government of the latter country, the Republic of Hayti for nearly sixty years has maintained its independence before the world, and performed honorably all its duties in the family of

nations. At one time it embraced the whole island: at present it occupies a portion only, with a population of six hundred thousand.

The Republic of Liberia extends along the western coast of Africa for a space of five hundred miles, beginning at the British colony of Sierra Leone, with an average breadth of fifty miles, between latitude 4° 20′ and 7° 20′ north, embracing an area of thirty thousand square miles, being almost precisely the area of Hayti, — so that these two regions, one an island and the other a strip of African sea-coast, are of equal geographical extent. I say nothing of the origin of this republic, although it cannot be contemplated without the conviction that perhaps it is one of the most important colonies ever planted. At last civilization obtains foothold in Africa, almost under the equator.

In soil and productions, if not in climate, this region is hardly less favored than Hayti. Though so near the equator, the mercury seldom rises above ninety degrees in the shade, and never falls below sixty. Most of the productions in one are also found in the other. But Liberia abounds in iron ore. Copper and other metals are said to exist in the interior. It is, however, in sugar, cotton, coffee, and palm-oil that Liberia seems destined to excel. A person familiar with the country reports that it "bids fair to become one of the greatest sugar-producing countries in the world." The population embraces some fifteen thousand persons, emigrants, or their children, from the United States, with a large native population, held in subjection and already won toward civilization, amounting to more than two hundred thousand.

With two countries like these the argument for treaties is strong, without pursuing the inquiry further. But it becomes irresistible, when we consider the positive demands of our commerce in these quarters. Even in spite of coldness, neglect, and injustice, our commercial relations have grown there to great importance. If assured of the customary protection afforded by treaties and the watchful presence of a diplomatic representative, they must become of greater importance still.

I have in my hands a tabular statement of our commerce and navigation with foreign countries for the year ending June 30, 1860, arranged according to amount, so that the country with the largest commercial intercourse stands first. This authentic testimony has been prepared at the Treasury Department, under my directions, for this occasion. Though most interesting and instructive, it is too minute to be read in debate. Here, under one head, are the exports from the United States; under another head, the imports; and, under other heads, the number of ships and tonnage: the whole so classified that we see at a glance the relative importance of foreign countries in their commercial relations with the United States.[1] Such a statement is in itself an argument.

It is to exhibit the precise position of Hayti and Liberia in the scale that I introduce this table. When it is said that out of seventy-one countries Hayti stands the *twenty-seventh*, and Liberia at least helps to make the

[1] See Statistical View, annexed to Speech: Congressional Globe, 37th Cong. 2d Sess., p. 1775. Also, Report of the Register of the Treasury of the Commerce and Navigation of the United States for the Year ending June 30, 1860, Tables 10, 11, 13: Executive Documents, 36th Cong. 2d Sess., H. of R., Vol. XI.

twenty-ninth, this is not enough. It must be observed that there are no less than ten countries, like Canada and Cuba, which, though enumerated separately, belong to other nationalities. If these are excluded, or added to their proper nationalities, Hayti will rank as *seventeenth*, and Liberia will take her place as *nineteenth*. But if we examine this table in detail, we find the important relative position of these two countries amply sustained. Confining ourselves for the present to Hayti, we have these remarkable results.

Hayti, in exports received from us, stands next to Russia. The exports to Hayti are $2,673,682; while those to Russia amount to $2,786,835. But the imports from Hayti are $2,062,723, while those from Russia are only $1,545,164. In number of vessels employed, Hayti is much the more important to us. Only sixty vessels are employed between the United States and Russia, while four hundred and ninety are employed between the United States and Hayti. So that, in importance of commercial relations, Hayti stands above Russia, where we have been constantly represented by a Minister Plenipotentiary of the highest class, with a Secretary of Legation, and have at this moment no less than eight consuls besides.

According to this table, there are no less than *fifteen* countries with which the United States maintain diplomatic relations, although lower than Hayti in the scale of commerce and navigation. This is not all. In point of fact, there are at least *three* other countries, where we are now represented by a Minister Resident, which do not appear in any commercial tables: I refer to Switzerland, Paraguay, and Bolivia. So that there are as many as *eighteen* countries of less commercial

importance than Hayti, with which the United States are now in diplomatic relations.

The exports to Austria, including Venice, where we are represented by a Minister Plenipotentiary of the first class, with a Secretary of Legation and three consuls, are less than one half our exports to Hayti, while the number of ships in this commerce is only forty-five, being four hundred and forty-five less than in our commerce with Hayti. The exports to Peru, where we are represented also by a Minister Plenipotentiary of the first class, with a Secretary of Legation and five consuls, are still less than those to Austria.

In this scale of commerce and navigation Hayti stands above Prussia, where we are represented by a Minister Plenipotentiary, and also above Sweden, Turkey, Central America, Portugal, the Papal States, Japan, Denmark, and Ecuador, where we are represented by Ministers Resident. It also stands above the Sandwich Islands, where we are represented by a Commissioner. Of these there are several whose combined commerce with the United States is inferior to that of Hayti. This is the case with Sweden, Turkey, Portugal, Japan, Denmark, and Ecuador, which altogether do not equal Hayti in commercial relations with the United States.

Our combined exports to Turkey in Europe and Turkey in Asia are nearly two millions less than to Hayti; and yet, with this Mohammedan Government we have felt it important within a few weeks to negotiate a treaty of commerce.

The commerce with China is among the most valuable we possess, and the ships engaged in it are of large size; but in number they are inferior to those

engaged in trade with Hayti. And yet at China we have a Minister Plenipotentiary of the first class, with a salary of twelve thousand dollars, an interpreter with a salary of five thousand dollars, two consuls with salaries each of four thousand dollars, one other consul with a salary of three thousand five hundred dollars, two other consuls with salaries each of three thousand dollars, and two other consuls paid by fees.

Perhaps the comparison between Hayti and the Sandwich Islands is the most instructive. Both are islands independent in government, — Hayti with a population of six hundred thousand, the Sandwich Islands with a population of little more than seventy thousand. The exports to Hayti, as we have already seen, are $2,673,-682, while the exports to the Sandwich Islands are only $747,462. And the difference in navigation is as great. In commerce with Hayti there are four hundred and ninety ships, with an aggregate of 82,360 tons, while in commerce with the Sandwich Islands there are only eighty-five ships, with an aggregate of 35,368 tons. And yet, at the Sandwich Islands, with this inferior population, inferior commerce, and inferior navigation, we are represented by a Commissioner, with a salary of seven thousand five hundred dollars, one consul with a salary of four thousand dollars, another consul with a salary of three thousand dollars, and still another paid by fees.

Nor is the interest in the trade with Hayti confined to any particular State or section of the United States. From other authentic tables it appears that the New England States send fish and cheap cottons, — Pennsylvania and the Western States send pork, — Vermont, New York, Ohio, and Illinois send beef, butter, and

cheese, — Philadelphia and Boston send soap and candles, — while Maine sends lumber, and in times past Southern States have sent rice and tobacco.

Of fish Hayti in 1859 – 60 took from us 55,652 cwt., being much more than was taken by any other country, except Cuba, which took 59,719 cwt., and much more than was taken by all the rest of the West Indies. Of cotton manufactures Hayti took from us to the value of $ 227,717, being more than was taken by many other countries together, and nearly double the amount taken by Cuba and Porto Rico together, the two remaining, but valuable, American possessions of Spain. Of butter Hayti took 211,644 pounds, of cheese 121,137 pounds, of lard 675,163 pounds, — but of soap she took 2,602,-132 pounds, being three times as much as was taken by any other country. Cuba, which stands next, took only 867,823 pounds, while Mexico took only 66,874 pounds.[1]

Such are some of the articles, which I mention that you may see the distribution of this commerce in our own country, as well as the extent to which, though pursued under difficulties, it has already gone.

The practical advantages from the recognition of Hayti were directly urged upon the National Government by one of its agents, even during the unfriendly administration of President Pierce. I refer to the consular return of John L. Wilson, commercial agent at Cape Haytien, under date of June 5, 1854, as follows.

[1] Report of Register of Treasury of the Commerce and Navigation of the United States, for the Year ending June 30, 1860, Table No. 1: Executive Documents, 36th Cong. 2d Sess., H. of R., Vol. XI.

"By a recognition of the independence of Hayti our commerce would be likely to advance still more. Our citizens trading there would enjoy more privileges, besides standing on a better footing. *Many decided advantages might also be obtained through treaty*, and our own Government exercise a wholesome influence over theirs, of which it stands much in need."[1]

This is certainly strong testimony, although, when we consider his political relations, testimony from an unwilling witness. There is other testimony of a similar character. In the text of the elaborate report by the Department of State, from which the above is taken, is found the following weighty opinion.

"There being no treaty between the United States and Hayti, the commerce between the two countries is governed by such local laws and regulations as may from time to time be enacted. These are always subject to changes and alterations, sometimes so sudden, — decrees of to-day superseding the laws in force but yesterday, — that commercial interests, *especially those of the United States*, have been in many instances most seriously affected."[2]

As late as June 25, 1850, a law was in force which subjected the vessels of all countries not acknowledging the independence of Hayti to an additional duty of ten per cent. American vessels, being within its operation, could not compete with the vessels of other nations, even in exporting to Hayti our own staples. Then, again, there was a tariff, that took effect in January, 1850, under which there was a most injurious

1 Report on the Commercial Relations of the United States with all Foreign Nations, Vol. IV. p. 509: Executive Documents, 34th Cong. 1st Sess., H. of R., No. 47.

2 Ibid., Vol. I. p. 559.

discrimination against our trade. A despatch at that period from Aux Cayes to the Department of State says: "While the citizens of France are scarcely affected in their importations to Hayti, the Americans here import, and our merchants at home export, scarcely any article that is free." And yet, in the face of these annoyances, and notwithstanding the embarrassments which they occasioned, our merchants have secured at least a moiety of the foreign trade of Hayti. With the encouragements bestowed on our relations with other countries, we shall enjoy a much larger proportion.[1]

If any additional motive were needed, it might be found in the political condition of the West India Islands, and the present movements in Mexico. Spain, quickened by ancient pride, has begun to recover her former foothold,[2] and it is sometimes supposed that France is willing to profit by imagined change of sentiment in her favor. Thus far the Republic of Hayti has been left without sympathy or support from our country. That it is able to sustain itself so well gives assurance of still greater strength, when surrounded by more auspicious circumstances. Nor is the influence of Hayti to be neglected in adjusting that balance of power which is daily becoming of increased importance in the West Indies. It may be of value to us that this republic should be among our friends, while it cannot be doubted that our friendship will contribute to Haytien security against danger from any quarter whatsoever. It will be remembered that Mr. Canning boasted, some-

[1] Commercial Relations, Vol. I. p. 560.

[2] This foothold on the Dominican portion of the island proved to be only temporary.

what grandly, that he called a new world into existence to redress the balance of the old, — alluding in this way to the acknowledgment of the Spanish colonies. In the same spirit, and without any exaggeration, may it be said that by the acknowledgment of Hayti we shall provide a check to distant schemes of ambition, which have latterly menaced an undue predominance in the West Indies. In this view, the present proposition has a political importance which it is difficult to measure. It becomes a pledge of permanent peace, as well as of commerce; but it can have this character only if made effective, sincerely and honestly, according to the usage of nations.

Of the many colonies following our example and independence Hayti was the first, and yet, by strange perversity, is not even now recognized by our Government. We are told that the last shall be first and the first shall be last. This, surely, is a case where the first is last. It remains to be seen, if, under the genial influence of such recognition, Hayti may not become, among all independent colonies, first in importance to us, as it was first in accepting our example.

In acknowledging the independence of Hayti, we follow too tardily the lead of other nations. France for a long time hesitated, as Spain hesitated, to acknowledge the independence of her colonies. This concession was made in 1825, under Charles the Tenth, while Hayti stipulated by treaty to pay one hundred and fifty million francs, as well for the recognition as for indemnification to colonial proprietors. It was natural that the mother country should hesitate; but when France abandoned all claim, every objection to recognition by other nations ceased. Accordingly, this republic has been

recognized, if not cordially welcomed, by Great Britain, France, Spain, Prussia, Denmark, Holland, Belgium, Portugal, Sweden, Hanover, Italy, and even by Austria, all of whom have representatives there, duly chronicled in the Almanach de Gotha.

Thus far I have confined myself to the case of Hayti. But Liberia has claims of its own. If our commercial relations with this interesting country are less important, they are nevertheless of such consequence as to require protection, while this republic may properly look to us for parental care.

The commercial tables by which I have illustrated so completely the relative importance of Hayti are less precise with regard to Liberia, inasmuch as this republic, owing to unhappy prejudices in recent Administrations, was not allowed a separate place in the tables, but was concealed under the head of "Other Ports in Africa." From authentic sources I learn that the exports from the single port of Monrovia for the year 1860 amounted to near $ 200,000, while those from the whole republic amounted to as much as $ 400,000.

I forbear details with regard to the commerce of Liberia. It is enough that it is already considerable, and is increasing in value, although Great Britain, by a treaty, and the cultivation of friendly relations, has done something to divert this commerce from the United States. But it is not too late for us to enter into a treaty, and to establish similar friendly relations. If, beyond the impulse of self-interest, we need anything to quicken us, we shall find it in the judgment of Henry Clay, who, in a letter dated Ashland, October 18, 1851, uses these positive words: —

"I have thought for years that the independence of Liberia ought to be recognized by our Government, and I have frequently urged it upon persons connected with the Administration, — and I shall continue to do so, if I have suitable opportunities."

In taking this step, and entering into a treaty with Liberia, we only follow the example of commercial nations. Nor can I doubt that we must in this way essentially promote our own commercial interests. Liberia is so situated, that, with the favor of the National Government, it may become the metropolitan power on the whole African coast, so that the growing commerce of that continent will be to a great degree in its hands.

I do not dwell at length on the general advantages from the recognition of these two powers, nor do I enlarge on the motives of justice. I mean to state the case simply, without introducing any topic which can justly cause debate in this body. It is enough that the acknowledgment is required for our own good. Happily, in benefiting ourselves we shall promote the interests of others.

There is one consequence which I cannot forbear to specify. Emigrants to these Republics will be multiplied by such recognition, while every emigrant, when happily established, will create an additional demand for the productions of our commerce, and contribute to the number of American keels which plough the ocean.

And there is yet one other consequence, which ought to be presented expressly. Our commerce will be put at once under the solemn safeguard of treaty, so that it will enjoy that security which is essential to its perfect prosperity, and can no longer suffer from discriminating

duties or hostile legislation, aroused by a just sensibility at our persevering illiberality. If you would have such treaties, you must begin by an acknowledgment of independence.

Sir, there is one business only which can suffer by this measure: I mean that of counterfeit money. You know, Sir, that, by a familiar rule of International Law, declared by the Supreme Court of the United States,[1] it belongs exclusively to the political department of the Government to determine our relations with a foreign country. And since our Government refuses to acknowledge Hayti, our courts of justice are obliged to do so likewise; so that, when criminals are arraigned for counterfeiting the money of Hayti, they decline all jurisdiction of the offence. As Hayti is not a nation, it cannot have money. Such is the reasoning, and the counterfeiters go free. It is said that during the past thirty years millions of false dollars have in this way been put in circulation. A case has occurred only recently, where the counterfeiter was promptly discharged, while the witness alone seemed to be in danger. It is time that such an outrage should be stopped.

It may be said that the same objects can be obtained by consuls, instead of commissioners. It is clear that it is not the habit of the United States to enter upon negotiations and open friendly relations with foreign states through consuls. And it is also clear, that, according to the usage of nations, consuls are not entitled to the same consideration with diplomatic representatives. Their influence is less, whether in dealing with the Government to which they are accredited, or with the representatives of other powers at the same place.

[1] Kennett et al. *v.* Chambers, 14 Howard, R., 38.

On this point I content myself with reading the words of Mr. Wheaton.

"Consuls are not public ministers. Whatever protection they may be entitled to in the discharge of their official duties, and whatever special privileges may be conferred upon them by the local laws and usages, or by international compact, they are not entitled by the general Law of Nations to the peculiar immunities of ambassadors. No state is bound to permit the residence of foreign consuls, unless it has stipulated by convention to receive them. They are to be approved and admitted by the local sovereign, and, if guilty of illegal or improper conduct, are liable to have the exequatur which is granted them withdrawn, and may be punished by the laws of the state where they reside, or sent back to their own country, at the discretion of the Government which they have offended. In civil and criminal cases they are subject to the local law, in the same manner with other foreign residents owing a temporary allegiance to the state."[1]

It may be true that negotiations are sometimes conducted by consuls, but very rarely; and the exceptions testify to the prevailing policy. Ministers are the received agents of diplomacy. Any other agent must be inferior in weight and character. If this be true, — and it is undeniable, — then obviously the objects now proposed can be most fitly and effectively accomplished only by diplomatic representatives. And since what is worth doing is worth well doing, I hope there will be no hesitation. Here again the example of the great European powers may properly influence us. England, France, and Spain have diplomatic representatives at Hayti, who are reputed to discharge their responsible duties with activity and ability. All these have the

[1] Elements of International Law, Part III. ch. 1, § 22.

advantage of subsisting treaties. Our treaty remains to be negotiated. To do this in such a way as to secure for our various interests all proper advantages must be our special aim. Any further neglect on our part can be nothing less than open abandonment of these various interests. Too long already has this sacrifice been made.

Mr. President, a full generation has passed since the acknowledgment of Hayti was urged upon Congress. As an act of justice too long deferred, it aroused even then the active sympathy of multitudes, while as an act for the benefit of our commerce it was ably commended by eminent merchants of Boston and New York without distinction of party. It received the authoritative support of John Quincy Adams, whose vindication of Hayti was associated with his best labors in the other House. The right of petition, which he steadfastly maintained, was long ago established. Slavery in the national capital is now abolished. It remains that this other triumph shall be achieved. Petitioners, who years ago united in this prayer, and statesmen who presented the petitions, are dead. But they will all live again in the good work they generously began.

Mr. President, this is the statement I have to make on this important question. As I know that the Senator from Kentucky [Mr. DAVIS] desires to move an amendment, I shall not ask a vote to-day; but I propose that the further consideration of the bill be postponed until to-morrow at half past twelve o'clock, when I hope we may have a vote upon it.

The motion was agreed to.

April 24th, the Senate, as in Committee of the Whole, resumed the consideration of the bill to authorize the President of the United States to appoint diplomatic representatives to the Republics of Hayti and Liberia respectively. Mr. Davis, of Kentucky, moved to strike out all after the enacting clause, and insert: —

"That the President of the United States be, and hereby is, authorized, by and with the advice and consent of the Senate, to appoint a consul to the Republic of Liberia, and a consul-general to the Republic of Hayti, respectively, with powers to negotiate treaties of amity, friendship, and commerce between the United States and those Republics."

In the course of his remarks, Mr. Davis expressed himself as follows.

"Mr. President, — I am weary, sick, disgusted, despondent with the introduction of the subject of Slaves and Slavery into the Chamber; and if I had not happened to be a member of the committee from which this bill was reported, I should not have opened my mouth upon the subject. . . . . I oppose the sending of ambassadors of any class from our Government to theirs upon this consideration: it would establish diplomatically terms of mutual and equal reciprocity between the two countries and us. If, after such a measure should take effect, the Republic of Hayti and the Republic of Liberia were to send their ministers plenipotentiary or their chargés d'affaires to our Government, they would have to be received by the President, and by all the functionaries of the Government, upon the same terms of equality with similar representatives from other powers. If a full-blooded negro were sent in that capacity from either of those countries, by the Laws of Nations he could demand that he be received precisely on the same terms of equality with the white representatives from the powers of the earth composed of white people. When the President opened his saloons to the reception of the diplomatic corps, when he gave his entertainments to such diplomats, the representatives, of whatever color, from those countries, would have the right to demand admission upon terms of equality with all other diplomats; and if they had families consisting of negro wives and negro daughters, they would have the right to ask that their families also be invited to such occasions, and that they go there and mingle with the whites of our own country and of other countries that happened to be present. We recollect that a few years ago the refined French court admitted and received the representative of Soulouque, who then denominated himself, or was called, the Emperor of Dominica, I think."

Mr. Sumner. "Of Hayti."

Mr. Davis. "Well, a great big negro fellow, dressed out with his silver or gold lace clothes in the most fantastic and gaudy style, presented himself in the court of Louis Napoleon, and, I admit, was received. Now, Sir, I want no such exhibition as that in our capital and in our Government. The

American minister, Mr. Mason, was present on that occasion, and he was sleeved by some Englishman — I have forgotten his name — who was present, who pointed him to the ambassador of Soulouque, and said, 'What do you think of him?' Mr. Mason turned round and said, 'I think, clothes and all, he is worth a thousand dollars.' [*Laughter.*]

. . . . . .

"Mr. President, I regret to have felt myself forced to speak the words upon this subject I have. I do begin to nauseate the subject of Slaves and Slavery in debate in this Chamber; and it was only because this measure has been perseveringly and uniformly opposed from the Slave States heretofore, and I know is distasteful, to a very considerable extent, to the people of those States, and because the measure, in the form in which it has been reported, would have the effect, in my opinion, to increase this feeling, that I have thought it incumbent on me to say a word."

Mr. Sumner. Mr. President, the Senate will bear me witness, that, in presenting this important question yesterday, I made no allusion to the character of the population in the two Republics. I made no appeal on account of color. I did not allude to the unhappy circumstance in their history, that they had once been slaves. It is the Senator from Kentucky who introduces this topic. And not only this, Sir, he follows it by alluding to some possible difficulties — I hardly know how to characterize them — which may occur in social life, should the Congress of the United States undertake at this late day, simply in harmony with the Law of Nations, and following the policy of civilized communities, to pass this bill. I shall not follow the Senator on those sensitive topics. I content myself with a single remark. More than once I have had the opportunity of meeting citizens of these Republics, and I say nothing beyond the truth when I add that I have found them so refined and so full of self-respect as to satisfy me that no one of them charged with a mission from his Government can seek any society where he will be not entirely welcome. Sir, the Senator from

Kentucky may banish all personal anxiety. No representative from Hayti or Liberia will trouble him.

But the proposition of the Senator makes a precise objection to the bill, which I am ready to meet. He insists that we shall be represented by consuls only, and not by diplomatic agents. Yesterday, in the remarks I had the honor of addressing to the Senate, I anticipated this very objection. I quoted then the authoritative words of Mr. Wheaton in his work on the Law of Nations, where he sets forth the distinction between ministers and consuls, and shows the greater advantage from a representation by one than by the other. I follow up that quotation now by reading from another work. It is a treatise on International Law and the Laws of War by General Halleck; and as I quote this authority, which is not yet much known, I venture to remark that I doubt if there is any recent contribution to the literature of the Law of Nations of more practical value. In a few words he states the character of consuls. I quote from him as follows.

"Consuls have neither the representative nor diplomatic character of public ministers. They have no right of exterritoriality, and therefore cannot claim, either for themselves, their families, houses, or property, the privileges of exemption which by this fiction of law are accorded to diplomatic agents, who are considered as representing, in a greater or less degree, the sovereignty of the state which appoints them. They, however, are officers of a foreign state, and, when recognized as such by the exequatur of the state in which they exercise their functions, they are under the special protection of the Law of Nations. Consuls are sometimes made also chargés d'affaires, in which cases they are furnished with credentials, and enjoy diplomatic privi-

leges; but these result only from their character as chargés, and not as consuls."[1]

The Committee who had the subject in charge, taking it into careful consideration, — as I believe the Senator from Kentucky, who is a member of the Committee, will confess, — deliberately reached the conclusion that it was advisable for the United States at present to be represented at each of those Republics by a person of diplomatic character. The Committee put aside the proposition that we should be represented merely by a consul. It was felt that such an officer would not adequately do all that our country might justly expect to have done. Nor is this all. We were guided also by the precedents of our Government. There are eighteen different states lower down in the scale of commerce and navigation with the United States, where we are now represented by diplomatic representatives. One of these, as I explained yesterday, is the Sandwich Islands, with a population of only seventy thousand, and with a commerce and navigation vastly inferior to that between the United States and Hayti.

Mr. Davis. I think we have too many.

Mr. Sumner. Possibly. I go into no inquiry on that point. Suffice it to say we already have these eighteen diplomatic representatives, and one of these is at the Sandwich Islands, with a population, a commerce, and navigation inferior to those of Hayti. Besides, at the Sandwich Islands we have three consuls highly paid. If we have too many, let us reduce the

[1] International Law, or Rules regulating the Intercourse of States in Peace and War, by H. W. Halleck, p. 242.

list, but do not commence our economies on Hayti and Liberia.

The Committee in their conclusion followed the usage of nations, and also the example of the great powers at Hayti. In presenting this measure, I make no appeal on account of an oppressed race. I urge it simply as an act for our own good. We go about the world hunting up the smaller powers, where to make treaties and to place diplomatic representatives, under the temptation of petty commercial advantage. Thus far we have stood aloof from two important opportunities of extending and strengthening our influence. It is time to change.

The proposition of Mr. Davis was rejected, — Yeas 8, Nays 30.

Mr. Saulsbury, of Delaware, then said : —

"After the vote just taken in the Senate, I shall not trespass upon their attention, as I intended to do, — only for a brief period, however. It is evident that this bill is going to pass. I want the country, however, to know that according to the rules of the Senate foreign ministers have a right upon this floor, and we have set apart a portion of the gallery for the ministers and their families. If this bill should pass both Houses of Congress and become a law, I predict that in twelve months some negro will walk upon the floor of the Senate of the United States and carry his family into that gallery which is set apart for foreign ministers. If that is agreeable to the taste and feeling of the people of this country, it is not to mine; and I only say that I will not be responsible for any such act. With this I will content myself."

The question, on the passage by yeas and nays, resulted, Yeas 32, Nays 7.

So the bill was passed.

June 3d, the bill passed the House, — Yeas 86, Nays 37.

The passage of this bill was felt to be an important stage in the warfare with Slavery. Governor Andrew saw it so, and wrote : —

"The triumphant and exemplary majority which the Hayti bill obtained

in the Senate is most gratifying. I am greatly rejoiced. The law, when passed, will be a recognition of the *Colored Man*, not merely of Hayti. It is a jewel in your crown."

Joshua Leavitt, of New York, the tried Abolitionist, also saw it so, and wrote : —

"Allow me to congratulate you on the splendid vote in the Senate on Haytien recognition. I think it shows the benefit of waiting for the right time, and then striking. This action is final in regard to the supremacy of the Slave Power. How can they administer a government that is in amity with a nation of insurgent negro slaves?"

The joy in Hayti was reported by Seth Webb, Jr., our Commercial Agent at Port-au-Prince.

"We all admire the way you steered the recognition through the Senate, and can only hope for as good a pilot in the House.

"The news of the passage of the Recognition Bill through the Senate was received here about the same time with that of the taking of Yorktown and Williamsburg, and diffused real joy among all classes. The American residents illuminated their houses, and had a good time generally.

"Your speech on the passage of the Recognition Bill attracts great attention here, and, when printed in full, will be extensively read."[1]

Hon. Benjamin C. Clark, an eminent merchant, acting as Consul of Hayti at Boston, wrote with the feelings of an American citizen, as well as of a Haytien representative.

"The passage of the bill under your thorough exposition of the subject will be a big white stone in our pathway as a nation, and a gravestone to the vampires and Vandals who have left nothing by the wayside but works of treason leading to bloodshed and desolation."

The feelings of the Haytien people were communicated by the following letter.

"Consulate of Hayti, New York, 26 April, 1862.

"Sir,—I have the honor to express my high appreciation of the important services you have so untiringly rendered to Hayti, for which you receive the gratitude of all liberal and benevolent persons who desire justice and political equality accorded to all men, and especially, in the present instance, to a people who, under many embarrassments, have nobly maintained their position, and are daily advancing in intellectual culture and in the refinements of civilized life. . . . .

"My despatches announcing the recognition were forwarded yesterday by a vessel sailing directly for the Bay of Port-au-Prince, and duplicates of my despatches will be sent on Monday by a fast vessel for Port-au-Prince.

[1] It was translated into French.

"I know the character of the Haytiens thoroughly, having lived among them some fifteen years, eight years of the time as Commercial Agent of the United States, and I can imagine their hearts swelling with pleasure and gratitude on the reception of the good news; and your name, Sir, will be held in kind remembrance as long as Hayti exists.

"Be pleased, Sir, to accept assurance of my distinguished consideration.

"GEORGE F. USHER, *Hayti Commercial Agent.*

"HON. CHARLES SUMNER, *United States Senator, &c., &c., &c.*, Washington."

The sentiments of Liberia were conveyed in the following.

"WASHINGTON, D. C., 10th June, 1862.

"DEAR SIR, — The children of Africa all over the globe owe you the deepest gratefulness and lasting honor, for you have been most prompt and punctual in vindicating their cause, in advancing their interests, and even in suffering in their behalf. But recently you have participated in an act which touches with benignant power upon the great home of this race, and which, combining with the generous and beneficent policy of other great nations, will, without doubt, serve to stir to unusual activity and to move with a civilizing and saving power millions of human beings throughout the entire continent of Africa.

"To you, Sir, to a very considerable degree, we owe the recognition of the Republic of Liberia by the Government of the United States.

"Had it not been for your masterly policy and your wise discretion, allied to a most persistent determination, we have reason to doubt whether the Bill of Recognition would not have met with a miscarriage during the present session of Congress.

"Thanks to your fast friendship, it has not failed, and the Republic of Liberia has been brought, through wise and cordial legislation, into brotherhood with the great Republic of America. And believe us, Sir, your name and memory will never be forgotten by us. Your virtues and excellencies shall be recited to our children's children, your philanthropic course and painful labors shall be held up for imitation to our aspiring youth, and your effigy shall adorn the halls of legislation, of letters, and of art in Liberia, with all the other great benefactors of our country and our race, as advancing civilization shall rear stately structures and noble courts.

"In our own behalf, and in behalf of the young nation we represent, we tender you cordial congratulations and our sincerest thanks, and we are, Sir,

"Your obedient servants,

"ALEX. CRUMMELL,
"EDWARD W. BLYDEN,
"J. D. JOHNSON,
"*Commissioners from Liberia, &c., &c.*

"HON. CHARLES SUMNER."

In the summer of 1871, the memory of this effort was revived by a beautiful medal offered to Mr. Sumner in the name of the Haytien peo-

ple, as an expression of gratitude for his defence of their independence on two different occasions, — the first being the present speech, and the other a later effort, growing out of the attempt to annex Dominica, with menace to Hayti. As Mr. Sumner felt it his duty to decline the medal, the Haytien Minister placed it in the hands of the Governor of Massachusetts, who deposited it in the Library of the State-House.

FINAL SUPPRESSION OF THE SLAVE-TRADE.

SPEECH IN THE SENATE, ON THE TREATY WITH GREAT BRITAIN, APRIL 24, 1862.

EARLY in the spring of 1862, Mr. Seward conferred with Mr. Sumner on a treaty with Great Britain for a mutual and restricted right of search and mixed courts, with a view to the suppression of the slave-trade. The negotiation was opened and proceeded successfully. April 7th, Mr. Sumner, being at the State Department, had the happiness of witnessing the signature of this treaty by Mr. Seward and Lord Lyons. April 11th, it was communicated to the Senate in Executive Session, and referred to the Committee on Foreign Relations. April 15th, it was reported to the Senate by Mr. Sumner, with the recommendation that the Senate advise and consent thereto. April 22d, it was brought up in the Senate, when Mr. Sumner moved the usual resolution of ratification. April 24th, on motion of Mr. Sumner, the Senate proceeded to consider the resolution of ratification. The yeas and nays were dispensed with by unanimous consent, and the resolution was agreed to without a dissenting vote.

MR. PRESIDENT, — Already a slave-trader has been executed at New York, being the first in our history to suffer for this immeasurable crime.[1] English lawyers dwell much upon treason to the king, which they denounce in a term borrowed from ancient Rome as *lese*-majesty; but the slave-trade is treason to man, being nothing less than *lese*-humanity. Much as I incline against capital punishment, little as I am dis-

[1] Nathaniel Gordon, commander of the slave-ship Erie, executed at New York, February 21, 1862.

posed to continue this barbarous penalty, unworthy of a civilized age, I see so much of good in this example at the present moment, that I reconcile myself to it without a pang. Clearly it will be a warning to slave-traders, and also notice to the civilized world that at last we are in earnest, while it helps make the slave-trade detestable. Crime is seen in the punishment, and the gallows sheds upon it that infamy which nothing short of martyrdom in a good cause can overcome.

The important treaty now before the Senate is to enforce on a large scale final judgment against the slave-trade. It is to do with many what has just been done with an individual. Our flag is desecrated by this hateful commerce; ships equipped in New York are tempted by its cruel gains. To stop this has been impossible, while Slavery prevailed in the National Government. How could our courts judge the slave-trader, how could the National Government set itself against the hateful commerce, while Slavery occupied all the places of power? But this is changed. If Emancipation is yet longer delayed, Slavery is at least dislodged from its predominant influence. Therefore is the way free for action against the slave-trade.

The treaty proceeds on the idea of earnest work, and it recognizes two especial agencies, each of which has been discussed between the two Governments in former years, but has always failed of adoption. The first is a mutual and restricted right of search, and the second is the well-known system of mixed courts, for the enforcement of the treaty.

The treaty has just been read, so that I need not recite in detail the terms of these two provisions. I

pass at once to the consideration of their origin and necessity.

There was a time when our country was open and earnest against the slave-trade. A well-known provision of the Constitution, classed among original compromises, restrained Congress from prohibiting it prior to the year 1808; but, just so soon as it had the power, Congress acted. Its promptitude justified the enthusiasm with which Judge Story in his Commentaries remarks: "It is to the honor of America that she should have set the first example of interdicting and abolishing the slave-trade in modern times."[1] By Act of Congress, bearing date as early as March 2, 1807, and to take effect January 1, 1808, the importation of slaves into the United States was prohibited, under penalties of imprisonment, fine, and forfeiture. These were increased by Act of Congress of April 20, 1818. But mild and moderate enactments were not enough; and at length, by Act of May 15, 1820, Congress was constrained to declare the slave-trade piracy, and to punish it with death. Since then this offence has stood in the catalogue of capital crimes.

Already this immense subject had occupied the attention of the great European powers. In the Treaty of Paris in 1814, Great Britain and France united against what was denounced as "a species of commerce equally repugnant to the principles of natural justice and the lights of the times."[2] This was followed by the Treaty of Ghent, at the close of the same year, in which the

[1] Commentaries on the Constitution of the United States, Vol. II. § 1334.

[2] Annual Register, 1814, p. 418. Martens, Nouveau Recueil de Traités, Tom. II. p. 15.

United States and Great Britain denounced the traffic in slaves as "irreconcilable with the principles of humanity and justice," and promised their best endeavors for its suppression.[1] Then came the Treaty of Vienna, where the great powers joined in declaring it "repugnant to the principles of humanity and of universal morality."[2] These were declarations only. The next attempt was to find a system of action, which should be effective against the Protean monster in the many metamorphoses it was able to assume, and here England nobly took the lead.

Lord Castlereagh instructed the Duke of Wellington, the British ambassador at Paris, to obtain from France the concession of a mutual right of search for the enforcement of the denunciation in which they were agreed; but this was found unwelcome to the French Government, and therefore not pressed at the time. Such was the beginning of the proposition, which, after various fortunes, is at last recognized in the treaty now before us.

Meanwhile negotiations were opened on our side particularly with Great Britain. These seem for a time to have had the sanction not only of the Executive, but of Congress, or at least of the House of Representatives. Messages from the President, calling attention to the slave-trade, were answered by reports from special committees of the House of Representatives. One of these, made February 9, 1821, concluded with a resolution, "That the President of the United States be requested to enter into such arrangements as he may deem suitable and proper with one or more of the maritime

[1] United States Statutes at Large, Vol. VIII. p. 223.
[2] Martens, Nouveau Recueil de Traités, Tom. II. p. 432.

powers of Europe for the effectual abolition of the African slave-trade." The report, while declaring that "to efface this reproachful stain from the character of civilized mankind would be the proudest triumph that could be achieved in the cause of humanity," proceeds to announce, in words applicable to the present moment, that "this happy result, experience has demonstrated, cannot be realized by any system, except a concession by the maritime powers to each other's ships of war of a qualified right of search." [1] Another report, by a select committee of the House, April 12, 1822, adopted the resolution of the previous committee, and also the recommendation of a mutual right of search, adding, that it could not be doubted "that the people of America have the intelligence to distinguish between the right of searching a neutral on the high seas in time of war, claimed by some belligerents, and that mutual, restricted, and peaceful concession by treaty, suggested by your Committee, and which is demanded in the name of suffering humanity." [2]

Then came the devoted efforts of Charles Fenton Mercer, an admirable representative of Virginia, who exposed this terrible traffic with a pathos not to be forgotten. On his motion, another resolution was adopted, February 28, 1823, by a vote of one hundred and thirty-one yeas to only nine nays, calling upon the President to enter into negotiations "for the effectual abolition of the African slave-trade, and its ultimate denunciation as piracy, under the Law of Nations, by the consent of the civilized world." [3] The character of this resolution was

[1] American State Papers, Foreign Relations, Vol. V. p. 93.
[2] Ibid., p. 141.
[3] Annals of Congress, 17th Cong. 2d Sess., 928, 1147, 1155.

impaired by the rejection of an amendment, "and that we agree to a qualified right of search,"[1] which was a falling off from the recommendations of the two committees.

The Executive responded to Congress, and, under instructions from John Quincy Adams, Secretary of State, a treaty was negotiated with Great Britain, bearing date March 13, 1824, in which it was stipulated that the ships of the two powers might "cruise on the coasts of Africa, *of America*, and of the West Indies, for the suppression of the slave-trade," and empowering them under certain restrictions to detain and capture vessels engaged in this traffic.[2] Important in substance, this treaty became important historically. Although the clause quoted appeared in the original draught sent out from Washington, yet the treaty was ratified by the Senate only on the condition that the words "of America" were struck out, thus excluding operations of British cruisers along the whole extent of American coast.[3] This was fatal to the treaty, as the British Government would not accept the condition. The case is memorable, not only as a check to negotiations for the suppression of the slave-trade, but as a conspicuous instance, where the Senate, in dealing with a power like Great Britain, did not shrink from asserting its prerogative under the Constitution, not less decisive than the tribunitial veto.

Thus it stood. Our own Government had proposed a modified search on the coast of America, but this was

1 Annals of Congress, 17th Cong. 2d Sess., 1154.

2 American State Papers, Foreign Relations, Vol. V. p. 320. See also p. 335.

3 Ibid., pp. 361, 362. Rush's Memoranda of a Residence at the Court of London (2d Series), p. 499.

point-blank refused by the Senate. It appears that the proposition was made contrary to the judgment of Mr. Adams. His sense of wrong from the long-continued search exercised by British cruisers was so keen that he would not willingly furnish any excuse for its revival; and such, it was feared, might be the concession. Afterwards, in the revelations which he sometimes made to the House of Representatives, he declared his repugnance to this negotiation, and the way it was overcome. The same repugnance, doubtless, influenced Senators in the vote on the treaty, increased by a growing sentiment for Slavery, which the debates on the Missouri Compromise had quickened.

Mr. Adams's statement made in debate at a later day lets us behind the scenes at an important period. After describing the proposition for a mutual right of search, the veteran said: —

"It was utterly against my judgment and wishes; but I was obliged to submit, and I prepared the requisite despatches to Mr. Rush, then our minister at the court of London. When he made his proposal to Mr. Canning, Mr. Canning's reply was, 'Draw up your convention, and I will sign it.' Mr. Rush did so, and Mr. Canning, without the slightest alteration whatever, without varying the dot of an *i* or the crossing of a *t*, did affix to it his signature, — thus assenting to our own terms in our own language. The convention came back here for ratification; but in the mean while another spirit came over the feelings of this House, as well as of the Senate. A party had been formed against the Administration of Mr. Monroe; the course of the Administration was no longer favored, and the House came out in opposition to a convention drawn in conformity to its own previous views. . . . . The Senate ratified the treaty, giving the right of search in the fullest manner to Great

Britain, with the exception, I think, of one article, which extended the right to the coast of the United States: that was rejected."[1]

This statement from an eminent quarter shows how at another time the opposition to a mutual right of search became manifest. It is for the Senate to determine if the time has not come for this opposition to cease.

Not disheartened by failure with the United States, Great Britain pursued her honorable policy, enlisting Government after Government, until nearly all the maritime powers of Europe, moved by a common sentiment of humanity, had conceded a mutual and restricted right of search, with the single object of suppressing the slave-trade. The famous Quintuple Treaty of 1841 between the great powers consecrated the same principle on a wider theatre; but, owing to the extraordinary efforts of General Cass, our Minister at Paris, France was induced to withhold her assent, yielding, I fear, to an irritated Anglophobia and to the growing pretensions of Slavery. The treaty was duly ratified by Great Britain, Russia, Prussia, and Austria. As a substitute, stipulations for naval coöperation were adopted between Great Britain and France, — also between Great Britain and the United States. And still Great Britain persevered in this glorious championship, until, in 1850, it was her boast that she stood party to no less than twenty-four treaties denouncing the slave-trade, of which ten conceded a mutual right of search and mixed courts, twelve conceded search with trial only

[1] Speech in the House of Representatives, April 14, 1842: Congressional Globe, 27th Cong. 2d Sess., p. 424.

before home tribunals, and two provided for naval co-operation.[1]

This summary brings us to the present treaty, where we find a mutual and restricted right of search and mixed courts for certain purposes, but with the trial of criminals only before home tribunals.

If at an earlier day there was reason to be sensitive about any concession of the right of search, especially to Great Britain, always so exacting on the ocean, that day has happily passed. The reason ceasing, so also should the opposition cease. Even if the acknowledged power of the United States and the enlightened opinion of the civilized world did not remove the liability to abuse, making it so absolutely impossible as not to be an element in the case, we cannot forget a recent signal event, when Great Britain openly renounced that tyrannous pretension which so stirred the soul of the whole American people, never again to assert it. This was done in solemn demand for the rendition of Mason and Slidell, who had been taken by a national cruiser, acting in precise conformity with early and constant British practice. Therefore on this account there need be no solicitude. Conceding search for the suppression of the slave-trade, we furnish no excuse and open no door for that other search, always so justly offensive, which finally brought war in its train. Such a concession now is only an addition to international policy demanded by the civilization of the age.

Nor need there be any jealousy on account of Slavery; for this power is disappearing. If, unhappily, it is

[1] Report from the Select Committee of the House of Lords on the Final Extinction of the African Slave-Trade, July 23, 1849, Appendix F, No. 1: Parliamentary Papers, 1850, Vol. IX., No. 53, p. 370.

not yet extinct, if it still lingers in prolonged malignant existence, it has ceased to sway the National Government. Therefore I see no reason why the sensibilities of its partisans should be consulted.

Another possible objection to the treaty is more technical. This also was presented by John Quincy Adams, when he spoke of mixed courts "as inconsistent with our Constitution," [1] because the judges are not appointed, nor do they hold office, according to its well-known requirements. But this objection, if entitled to any consideration, is mitigated in the present treaty, which hands over the slave-trader for trial in the home courts of the captor, leaving to the mixed courts only the condemnation and destruction of the slave-ship. But whatever doubts might have prevailed at an earlier period, when the question was less understood, it is plain now that this objection is wholly superficial and untenable. Besides courts known to the Constitution and subject to its requirements, there are others extra-constitutional, like courts in the Territories, where the judges hold for four years instead of during good behavior, and yet are recognized by the Supreme Court of the United States.[2] Like Territorial courts, mixed courts are plainly extra-constitutional, standing on the treaty power and the practice of nations, — as courts martial are also extra-constitutional, standing on the war power and the practice of nations.

[1] Letter to Mr. Rush, June 24, 1823: American State Papers, Foreign Relations, Vol. V. p. 334. See, also, Letter to Messrs. Gallatin and Rush, November 2, 1818, Ibid., p. 73; and Letter of Mr. Rush to Lord Castlereagh, December 21, 1818, Ibid., p. 113.

[2] American Ins. Co. et al. *v.* Canter, 1 Peters, S. C. R., 546; Benner et al. *v.* Porter, 9 Howard, R., 244.

Among frequent means for the determination of international questions are mixed courts or mixed commissions in various forms, where different nations are represented. Such tribunals are the natural incident of treaties, and were recognized as such at the beginning of our history. Nor is it easy to see how treaties can be consummated without their ancillary help. A mixed commission, where our country was represented, sat at London under Jay's Treaty, deciding numerous cases; and similar commissions have been sitting ever since. The Jay Commission was originally criticized on the ground that judicial power cannot be vested except according to the Constitution,[1] — being the very objection to mixed courts in anti-slave-trade treaties, that occupied so much attention at a later day, and to which I am now replying. But nobody now doubts that this commission was proper. The proposed tribunal, though differing in purpose, proceeds from the same fountain of power. It is kindred in character and origin. Now, without considering if the objection to mixed courts is not equally strong against a crowned head as arbitrator, as when the French Emperor sat in judgment on the long-pending litigation between the United States and Portugal in the *General Armstrong* case, it is obvious that all the international tribunals constituted by treaty, whether an emperor or a commissioner, are sustained by unbroken usage as well as by reason. To insist that the restrictions of the Constitution, evidently intended for the national judicature, are applicable to these outlying tribunals, is to limit the treaty power

[1] Features of Mr. Jay's Treaty, by Alexander J. Dallas,— originally published in the *American Daily Advertiser*. This able disquisition is preserved in the Appendix to the Life of Mr. Dallas by his Son, George Mifflin Dallas. See pp. 188, 189.

and to curtail the means of justice beyond the national jurisdiction. Mixed courts are familiar to International Law, and our country cannot afford to reject them, least of all on a discarded technicality which would leave us isolated among nations.

It remains only that we make haste to ratify the treaty, nor miss the great opportunity. A moment lost is a concession to crime. Therefore must we be prompt.

Foreign nations will not fail to recognize this open pledge to Human Rights, and the Rebels will discern a new sign of the national purpose. Abroad and at home we shall be strengthened. The Rebellion itself will feel the blow, and ambitious Slavery foresee its doom.

As soon as the vote was announced in the Senate, Mr. Sumner hastened to Mr. Seward at the State Department. It was five o'clock in the afternoon, and the Secretary was reposing on a sofa. On hearing the words, "The treaty is ratified unanimously," he exclaimed, "Where —— were the Democrats?" His joy was great, and Lord Lyons, on learning the result, was not less happy. It is much in a diplomatic career to sign any treaty, but it was an event to have signed a treaty promising the final extinction of an infinite scandal and curse to humanity.

Subsequent action was prompt. The treaty was ratified by the Senate April 24th; ratifications were exchanged in London May 25th; the treaty was proclaimed by the President June 7th, 1862.

June 10th, a message of the President, transmitting a copy of the treaty, with correspondence between Mr. Seward and Lord Lyons in relation to it, was laid before the Senate, and on motion of Mr. Sumner referred to the Committee on Foreign Relations, and ordered to be printed.

June 13th, Mr. Sumner reported from the Committee a bill to carry the treaty into effect, providing for the appointment, with the advice and consent of the Senate, of a judge and also an arbitrator on the part of the United States to reside at New York, a judge and also an arbi-

trator to reside at Sierra Leone, and a judge and also an arbitrator to reside at the Cape of Good Hope, — all the judges to be paid $2,500 annually, the arbitrator at New York $1,000, and the arbitrators at Sierra Leone and the Cape of Good Hope $2,000 respectively.

Owing to the pressure of business incident to the latter days of a very crowded session, Mr. Sumner was not able to call it up immediately. June 26th, on his motion, it was considered and passed: Yeas, 34; Nays, only 4.

Among the nays was Mr. Saulsbury, of Delaware, who remarked: —

"I do not object to the suppression of the African slave-trade, but I do not believe that this Government has the constitutional right to establish any such court. I think the treaty ought not to have been adopted."

July 7th the bill passed the House, and July 11th was approved by the President.

The importance of this treaty had not been exaggerated. The *Journal des Débats*, organ of French intelligence at Paris, in its enunciation, June 15, 1862, of the objects accomplished by the National Government, says: "There is a treaty with England, which, loyally executed, must soon render the slave-trade almost impossible."

The slave-trade became almost impossible, so that practically it ceased to exist. The terror of the law, with these provisions for its enforcement, sufficed at last to deter the perpetrators of this inhuman crime, and the ocean, so often traversed by slave-ships, became like a peaceful metropolis with a well-ordered police.

This great result was without the capture of a single vessel. It was enough that at last we were in earnest. Judges and arbitrators found themselves without employment, when, in an appropriation bill, of March 3, 1869, Congress called on the President, with the consent of Great Britain, to terminate that part of the treaty requiring mixed courts and their annual outlay.[1] This was done by treaty between the two powers, signed at Washington, June 3, 1870; so that the mutual right of search for the suppression of the slave-trade alone remained.

[1] United States Statutes at Large, Vol. XV. p. 321.

ENFORCEMENT OF EMANCIPATION IN THE DISTRICT.

Resolution and Remarks in the Senate, April 28, 1862.

April 18th, Mr. Sumner offered the following resolution, which was considered by unanimous consent, and adopted.

"*Resolved*, That the Secretary of the Interior be requested to furnish, for the use of the Senate, a list of all persons residing in the District of Columbia who appear in the returns of the last census as owners of slaves, indicating the number claimed to be owned by each person, with the classification of their ages according to the returns."

April 28th, the Secretary of the Interior accompanied the return with the suggestion, that, as it exposed the private affairs of individuals, it was questionable "whether it would be proper to print it for circulation." On hearing this communication read at the desk, Mr. Sumner moved its reference to the Committee on the District of Columbia, and remarked: —

MR. PRESIDENT, — In offering the resolution, I felt that I was doing good service to the Commissioners appointed to carry out our recent measure of Emancipation, and I felt also that I was helping to correct possible abuses in anticipation of its operation.

I have been sorry to hear of efforts during the last few weeks to run able-bodied slaves out of the District. Slavery is often called a patriarchal institution, and I am anxious to see how many of the patriarchs, in avoidance of the action of Congress, have transported slaves beyond the reach of its beneficent power. Such an out-

rage ought to be exposed. I confess that I find no good reason for delicacy towards persons so guilty. I am sure that freedom and truth will be gainers, when such conduct is laid bare. I cannot doubt that the object proposed is important.

These statistics should be brought before the Senate, if not before the country. They will be needed by the Commissioners, and I am sure they will do something to illustrate the character of Slavery.

The motion was agreed to.

THE CONDUCT OF OUR GENERALS TOWARDS FUGITIVE SLAVES.

SPEECH IN THE SENATE, ON A RESOLUTION OF INQUIRY, MAY 1, 1862.

MAY 1st, on motion of Mr. Wilson, of Massachusetts, the Senate resumed the consideration of the following resolution, submitted by him on the 3d of April.

"*Resolved*, That the Committee on Military Affairs and the Militia be directed to consider and report whether any further legislation is necessary to prevent persons employed in the military service of the United States from aiding in the return of or control over persons claimed as fugitive slaves, and to punish them therefor."

MR. PRESIDENT, — Some time has elapsed since we listened to the persuasive speech of the Senator from Iowa [Mr. GRIMES], but, unhappily, the subject is fresh still. The character, if not the efficiency, of our armies is concerned in the complete enforcement of the late legislation with regard to slaves. If this legislation be set at defiance, or evaded, I think that our military strength will be impaired, and I am sure that our good name must suffer.

I am grateful to the Senator from Iowa for the frankness with which he exposed and condemned the recent orders of several of our generals.

One of these officers, though last from California, was originally of Massachusetts. He served honorably in the Mexican War, and, I believe, is an excellent soldier. His present position as a general is due partly to my

exertions. I pressed his appointment. But, had I for a moment imagined he could do what he has just perpetrated, he would never have had my support. When an officer falls bravely in defence of his country, honest pride mingles with the regret that we feel. But when an officer falls as General Hooker has now fallen, there is nothing but regret. He has fallen, although not dead. I say this with pain; but I cannot say less.

The order of General Hooker has been quoted by the Senator from Iowa [Mr. GRIMES]. I ask leave to read part of a letter which I have received from his camp.

"I take the liberty of forwarding to you the enclosed order of General Hooker, with a report of its results, thinking that you will be interested to know how the late Act of Congress forbidding the rendition of slaves by army officers is violated, and hoping that some effort may be made to prevent such unjust and outrageous measures on the part of superior officers.

"Our moral and humane feelings have been violated by having been compelled to witness the attempts of slaveholders, known to be of Secession proclivities, coming into our camps and searching our private quarters for their slaves, under the cover of a protecting order from a general who exceeds his authority."

This letter expresses feelings natural to a humane bosom. In contrast with General Hooker, I call attention to the course of General Doubleday, whose headquarters are here in Washington. I read his order.

"HEADQUARTERS, MILITARY DEFENCES NORTH OF THE POTOMAC,
WASHINGTON, April 6, 1862.

"SIR, — I am directed by General Doubleday to say, in answer to your letter of the 2d instant, that all negroes coming into the lines of any of the camps or forts under his command are to be treated as persons, and not as chattels.

"Under no circumstances has the commander of a fort or camp the power of surrendering persons claimed as fugitive slaves, as it cannot be done without determining their character.

"The additional article of war recently passed by Congress positively prohibits this.

"The question has been asked, whether it would not be better to exclude negroes altogether from the lines. The General is of the opinion that they bring much valuable information which cannot be obtained from any other source. They are acquainted with all the roads, paths, fords, and other natural features of the country, and they make excellent guides. They also know, and frequently have exposed, the haunts of Secession spies and traitors and the existence of Rebel organizations. They will not, therefore, be excluded.

"The General also directs me to say that civil process cannot be served directly in the camps or forts of his command, without full authority be obtained from the commanding officer for that purpose.

"I am, very respectfully, your obedient servant,

"E. P. Halsted, *Assistant Adjutant-General.*

"Lieutenant-Colonel John D. Shaul,
Commanding Seventy-Sixth Regiment New York Volunteers."

General Doubleday acted bravely at Fort Sumter; but he did not render a truer service to his country on that occasion than he has now done in this order. If this example were followed everywhere in our camps, we should at least save ourselves from shame, if we did not secure victory.

Other generals at the West think they do their duty best, when they serve Slavery. There is General McCook, of whom we have the following sad report, on the

authority of a paper at Nashville, recounting the visit of a slave-hunter to his camp.

"He visited the camp of General McCook, in Maury County, in quest of a fugitive, and that officer, instead of throwing obstacles in the way, afforded him every facility for the successful prosecution of his search. That General treated him in the most courteous and gentlemanly manner, as also did General Johnson, and Captain Blake, the brigade provost-marshal. Their conduct toward him was in all respects that of high-toned gentlemen desirous of discharging their duties promptly and honorably. It is impossible for the army to prevent slaves from following them; but whenever the fugitives come into the lines of General McCook, they are secured, and a record made of their names and the names of their owners. All the owner has to do is to apply either in person or through an agent, examine the record or look at the slaves, and, if he finds any that belong to him, take them away."

Can we listen to such a statement and not feel indignant at the levity with which human freedom is treated?

Yet similar cases multiply. There is the provost-marshal of Louisville, who seems to be a disgrace to our army, if we may believe the following report.

Here Mr. Sumner quoted at length the description of his conduct: making colored people "his subjects of oppression and inhuman treatment"; "ordering his provost guards to flog all colored persons out after dark"; "now being revenged on the colored people for their faithfulness to the Union cause."[1]

But, Sir, an incident has occurred under General Buell's command which cannot be read without a blush.

[1] Congressional Globe, 37th Cong. 2d Sess., May 1, 1862, p. 1893.

Here it is, as described in the letter of a soldier who was more than a witness, even a party to it. I find this letter in a newspaper, but it has been furnished to me in manuscript by the person to whom it is addressed.

"CAMP ANDY JOHNSON, NEAR NASHVILLE,
TENNESSEE, March 8, 1862.

"MY DEAR PARENTS, — . . . . A great outrage was perpetrated in our camp yesterday, as follows.

"A black boy, named Henry, has been at work for the Colonel for some days. His owner came after him while we were camped on the other side of the river, but the boys hooted him out of camp. The negro said he would sooner be killed on the spot than go back with his master, even if he knew he would not be punished. His master, he said, was a Secessionist, and had kept him (the boy) on some fortifications down the river at work for four months.

"Nothing more transpired concerning his return until yesterday. While the greater part of the regiment were out on picket, the boy's owner came with two sentinels of the provost guard from the city, and, after chasing the poor frightened boy through the camp several times, — he drawing a knife once, and the sentinel knocking him down with his musket, — they captured and delivered him to his owner, who stood waiting outside the lines. The latter paid the catching sentries fifteen dollars each, and led Henry away with him unmolested, flourishing a pistol at his head as he went. They had no order — at least, showed none — for the boy from head-quarters, and the Lieutenant-Colonel of our regiment, who was in command, need not have delivered him up without such an order, yet allowed him to be caught, and the Major forbade our boys from giving him any assistance. One of the sentinels was from a Kentucky, and one from an Indiana regiment. . . . .

"The former master of our boy will not get him without an order, and an imperative one, I believe; and if one is given for him, — his master having been a strong and active Secessionist, a quartermaster for the Southern army, in fact, — I have about concluded to follow it by immediate resignation, and this, whether the order be for him or any other negro. The order would make it an official act. What do you think my duty would be in the premises?"

Of General Buell I know nothing personally; but such an incident must fill us with distrust. He may possess military talent, he may be a thunderbolt of war; but it is clear that he wants that just comprehension of the times and that sympathy with humanity without which no officer can do his complete duty.

But General Buell may, perhaps, shelter himself behind the instructions of his superior officer; and this brings me to the famous Order No. 3 of Major-General Halleck. I have it in my hands, and quote these words: —

"We will prove to them that we come to restore, not to violate, the Constitution and the laws. . . . . The orders heretofore issued from this department in regard to pillaging, marauding, and the destruction of private property, and stealing and the concealment of slaves, must be strictly enforced. It does not belong to the military to decide upon the relation of master and slave: such questions must be settled by the civil courts. *No fugitive slaves will, therefore, be admitted within our lines or camps, except when specially ordered by the General commanding.*"[1]

[1] Rebellion Record, Vol. IV., Documents, p. 204. General Halleck's subsequent explanation of this order, as "military, and not political," is criticized by Mr. Greeley: The American Conflict, Vol. II. p. 241. See also, *ante*, pp. 119, 120.

In this order, so strangely inconsistent, absurd, unconstitutional, and inhuman, the General perversely perseveres. In every aspect it is bad. It wants common sense, as well as common humanity. It is unworthy a man of honor and a soldier.

It is inconsistent with itself, inasmuch as the General proclaims that he "comes to restore, not to violate, the Constitution and the laws," and then proceeds to a direct violation of them. In the same order he says: "It does not belong to the military to decide upon the relation of master and slave: such questions must be settled by the civil courts." And then, in the face of this declaration, he proceeds to say that "no fugitive slaves will be admitted within our lines or camps." But pray, Sir, how can such persons be excluded from lines or camps without deciding that they are fugitive slaves? This flat and discreditable inconsistency is in harmony with the whole order.

But worse than its inconsistency is its absurdity. This watchful, prudent General proposes to exclude all fugitive slaves from his camps. In other words, he shuts out all opportunities of information with regard to the enemy naturally afforded by this class of deserters. They may come charged with knowledge of movements and plans; but the General will not receive them, because they are slaves. They may be able to disclose the secret of a campaign; but the General will not have it, because they are slaves. If we have failed thus far in knowledge of the enemy's designs, it is because this absurd policy has prevailed.

General Halleck may be instructed by General McDowell, whose opposite conduct shines in a despatch published in the papers.

"CATLETTSVILLE STATION, VIRGINIA,
FIFTEEN MILES SOUTH OF MANASSAS JUNCTION, April 13.

"HON. EDWIN M. STANTON, *Secretary of War* : —

"An intelligent negro has just come in from Stafford County, and says his master returned this morning from Fredericksburg to his home, and told his wife, in this negro's presence, that all the enemy's troops had left Fredericksburg for Richmond and Yorktown, the last of them leaving on Saturday morning. This last has just been confirmed by another negro.

"IRVIN MCDOWELL, *Major-General.*"

Here are two negroes coming into camp with important information, both of whom General Halleck's order would repel and drive back to bondage. And he may be instructed by the despatch of General Wool, just received, announcing our success at New Orleans, the news of which came by a "fugitive black." The General adds: "The negro bringing the above reports that the Rebels have two iron-clad steamers nearly completed, and that it is believed that the Merrimac will be out to-morrow." But all this information would be shut out by General Halleck. Can absurdity be more complete?

But worse than inconsistency or absurdity is its positive unconstitutionality. What right, under the Constitution, has this General to set himself up as judge in cases of human freedom? Where does he find his power? By whom has he been invested with this attribute? It is the boast of the National Constitution that all are "persons." The National Constitution so regards everybody, and surrounds everybody with the safeguards of "persons," even to the extent of declaring that "no person shall be deprived of *liberty* without due process

of law." And yet the army is gravely told to treat certain persons as slaves. Of course this cannot be without sitting in judgment most summarily on human freedom. How does the General know that they are slaves? On what evidence? Because they are black? Why may they not be free blacks? General Halleck would reverse the true presumption. He assumes Slavery, when he ought to assume Freedom. In the eye of the Constitution all are freemen until proved to be slaves, no matter of what color. The only question to be asked concerns loyalty. Are you loyal or rebel? If loyal, then welcome to the hospitality and protection of our camps. If rebel, then surrender to our arms. Be these the inquiries, with this rule, and the Union we seek to restore will not be indefinitely postponed.

But worse than its unconstitutionality is the inhumanity of this order, so shocking to the moral sense. This General, professing to fight the battle of the Constitution with the commission of the Republic, speaks of "the concealment of slaves" in the same class with "pillaging, marauding, and stealing." I complain of this confusion of language, showing an insensibility to human rights. It is like those shameful advertisements which garnish Southern newspapers, where "the boy Tom" and "the girl Sally" are to be sold in the same lot with "horses, mules, cattle, and swine." That such an order should be put forth in the name of our country may justly excite indignation.

On these various grounds I object to this order. In this criticism, which I make with sincere sorrow, I confine myself to the order. General Halleck is reputed an able officer, and I am sure he is an able lawyer. I do not intend to question his various capacity. But

I do protest against his perverse violation of the Constitution to carry out a miserable and disgraceful proslavery policy; and I protest against his being allowed to degrade the character of our country. Sir, we are making history. Every victory adds something to that history; but such an order is worse for us than defeat. More than any defeat it will discredit us with posterity, and with the friends of liberal institutions in foreign lands. I have said that General Halleck is reputed an able officer; but, most perversely, he undoes with one hand what he does with the other. He undoes by his orders the good he does as a general. While professing to make war upon the Rebellion, he sustains its chief and most active power, and degrades his gallant army to be the constables of Slavery.

How often must I repeat that Slavery is the constant Rebel and universal enemy? It is traitor and belligerent together, and is always to be treated accordingly. Tenderness to Slavery now is practical disloyalty and practical alliance with the enemy.

Believe me, Sir, against the officers named to-day I have no personal unkindness. I should much prefer to speak in their praise; but I am in earnest. While I have the honor of a seat in the Senate, no success, no victory, shall be apology or shield for a general who insults human nature. From the midst of his triumphs I will drag him forward to receive the condemnation which such conduct deserves.

This movement ended in the Bill for Confiscation and Liberation, approved July 17th, which provided for the freedom of the slaves of Rebels. The enactments on this subject were embodied by the President in the first Proclamation of Emancipation, September 22, 1862.

NO NAMES OF VICTORIES OVER FELLOW-CITIZENS ON REGIMENTAL COLORS.

Resolution in the Senate, May 8, 1862.

In a despatch announcing the capture of Williamsburg, May 6th, General McClellan inquired whether he was "authorized to follow the example of other generals and direct the names of battles to be placed on the colors of regiments." This gave occasion to the following resolution, moved by Mr. Sumner.

RESOLVED, That, in the efforts now making for the restoration of the Union and the establishment of peace throughout the country, it is inexpedient that the names of victories obtained over our fellow-citizens should be placed on the regimental colors of the United States.

Mr. Hale objected to its consideration; so it was postponed.

May 13th, Mr. Wilson introduced a joint resolution to authorize the President to permit regiments of the volunteer forces to inscribe on their flags the names of battles in which such regiments have been engaged; but no further action was had upon it.

Mr. Sumner's resolution excited comment at the time. The *National Intelligencer* remarked: —

"Now that public attention has for the first time been called to the subject, we presume there will be on the part of many an instinctive approval of the grounds on which Senator Sumner condemns the custom thus originated and practised by 'other generals.' . . . . When the Union is restored and peace has been reëstablished, we take it that the regimental colors of the United States will preserve no trace either of Union *victories* or Union

defeats. The name of 'Springfield,' in Missouri, would otherwise perpetually remind us of the unhappy fall of Lexington in that State."

An excellent citizen of New York, Alfred Pell, wrote that "exactly what Congress should do with base Secession standards and flags was pointed out by Mrs. Brownrigg, who

> "'whipped two female 'prentices to death,
> *And hid them in the coal-hole.*'"

Other testimony was from an undoubted authority, being none other than Lieutenant-General Winfield Scott, in his autobiography. After quoting the famous resolution which Rufus King laid upon the table of the Senate, February 18, 1825, fifteen days before he finally left that body, which he calls "a benign resolution," to the effect, that, as soon as the remnant of the national debt should be discharged, the net proceeds of the whole of the public lands should constitute a fund for Emancipation, the Lieutenant-General proceeds: —

"The resolution stands a national record. Here is statesmanship, far-sightedness. . . . . Here is magnanimity, considering the hostility of the South on account of Mr. King's powerful resistance to the admission of Missouri into the Union with Slavery. Here is a Christian's revenge, returning good for evil. All honor to a great deed and a great name! . . . .

"I place in juxtaposition with the foregoing a kindred sentiment that gleamed in the same body on a more recent occasion.

"It had been proposed, without due reflection, by one of our gallant commanders engaged in the suppression of the existing Rebellion, to place on the banners of his victorious troops the names of their battles. The proposition was rebuked by the subjoined resolution, submitted by the Hon. Mr. Sumner, May 8, 1862."

Then quoting the resolution, the Lieutenant-General adds: —

"This was noble, and from the right quarter."[1]

[1] Memoirs of Lieut.-General Scott, LL.D., written by Himself, Vol. I. pp. 188 – 190.

BOUNTY LANDS FOR SOLDIERS OUT OF REAL ESTATE OF REBELS.

Resolution in the Senate, May 12, 1862.

RESOLVED, That the Select Committee on the confiscation of Rebel property be directed to consider the expediency of providing that our soldiers engaged in the suppression of the Rebellion may be entitled to bounty lands out of the real estate of the Rebels.

This was objected to by Mr. Powell, of Kentucky, but on the next day it was agreed to.

TESTIMONY OF COLORED PERSONS IN JUDICIAL PROCEEDINGS FOR CONFISCATION AND EMANCIPATION.

Resolution in the Senate, May 12, and Remarks, June 28, 1862.

RESOLVED, That the Select Committee on the confiscation of Rebel property be directed to consider the expediency of providing, that, in all judicial proceedings to confiscate the property and free the slaves of Rebels, there shall be no exclusion of any witness on account of color.

This was objected to by Mr. Saulsbury, of Delaware, but on the next day it was agreed to.

The Select Committee failing to adopt this provision in the bill reported by them, entitled "A bill to suppress insurrection, punish treason and rebellion, and for other purposes," Mr. Sumner sought to engraft it on the bill by motion in the Senate.

June 28th, Mr. Sumner moved the following amendment: —

"And in all proceedings under this Act there shall be no exclusion of any witness on account of color."

Mr. Clark, of New Hampshire, Chairman of the Select Committee, said, that, "while they had no hostility to the general principle of the amendment, they thought it was better not to engraft it upon this bill."

Mr. Sumner replied: —

This bill is to operate in the Slave States. But, with the rule of evidence prevailing there, I see insuperable difficulties in the way of conviction. If Congress choose to authorize criminal proceedings against Rebels, as is

done by this bill, then in good faith they must see that the proceedings are not entirely nugatory, through failure of evidence, under the operation of an irrational rule of exclusion.

Mr. Clark said, that the Committee was influenced by the consideration, that under the bill slaves would become free on the conviction of their masters for treason; and the Committee "thought it would look a little like inducing the slave to come forward and swear against the master, ... if we put such a provision in the bill; and we rejected it on that ground."

Mr. Sumner replied: —

But the Senator will not forget that there are other slaves besides those of the master under trial, as well as colored persons who are not slaves. Whether slaves or not, even if freemen, the Senator knows well that there is one cruel rule of evidence everywhere in the Rebel States, which excludes the testimony of colored persons.

The amendment was rejected: Yeas 14, Nays 25.

This was the third move against exclusion of witnesses on account of color.[1]

[1] See, *ante*, p. 442.

THE LATE HON. GOLDSMITH F. BAILEY,
REPRESENTATIVE FROM MASSACHUSETTS.

SPEECH IN THE SENATE, ON HIS DEATH, MAY 15, 1862.

MR. PRESIDENT, — The last Representative of Massachusetts snatched away by death during the session of Congress was Robert Rantoul, Jr. Ripe in years and brilliant in powers, this distinguished person tardily entered these Halls, and he entered them not to stay, but simply to go. Congress was to him only the antechamber to another world. Since then ten years have passed, and we are now called to commemorate another Representative of Massachusetts snatched away by death during the session of Congress. Less ripe in years and less brilliant in powers, Mr. Bailey occupied less space in the eyes of the country; but he had a soul of perfect purity, a calm intelligence, and a character of his own which inspired respect and created attachment; and he, too, was here for so brief a term that he seems only to have passed through these Halls on his way, without, alas! the privilege of health as he passed.

Born in 1823, Mr. Bailey had not reached that stage of life, when, according to a foreign proverb, a man has given to the world his full measure;[1] and yet he had given such measure of himself as justified largely the confidence of his fellow-citizens. This was the more

[1] "On a donné sa mesure à quarante ans."

remarkable, as he commenced life without those advantages which assure early education and open the way to success. At two years of age he was an orphan, of humble parentage and scanty means. From school he followed the example of Franklin, and became a printer. There is no calling, not professional, which to an intelligent mind affords better opportunities of culture. The daily duties of the young printer are daily lessons. The printing-office is a school, and he is a scholar. As he sets types, he studies, and becomes familiar at least with language and the mystery of grammar, orthography, and punctuation, which, in early education, is much; and if he reads proofs, he becomes a critic. At the age of twenty-two our young printer changed to a student of law, and in 1848 was admitted to the bar.

In the very year of his admission to the bar the question of Slavery assumed unprecedented proportions, from the efforts made to push it into the Territories of the United States. Although he took no active part in the prevailing controversy, it must have produced its impression on his mind. It was to maintain prohibition of Slavery in the Territories, and to represent this principle, that he was chosen to Congress.[1] In a speech at the time he upheld this cause against the open opposition of its enemies and the more subtle enmity of those who disparaged the importance of the principle. Never had Representative a truer or nobler constituency. It was of Worcester, that large central county of Massachusetts, and broad girdle of the Commonwealth, which, since this great controversy began, has been always firm and solid for Freedom. To represent a people

[1] See, *ante*, Vol. V. p. 310.

so intelligent, honest, and virtuous was in itself no small honor.

But with this honor came those warnings which teach the futility of all honor on earth. What is honor to one whom death has already marked for his own? As life draws to its close, the consciousness of duty done, especially in softening the lot of others, must be more grateful than anything which the world alone can supply. Even the spoiler, Death, cannot touch such a possession. And this consciousness rightly belonged to the invalid who was now a wanderer in quest of health. Compelled to fly the frosts of his Massachusetts home during the disturbed winter of 1860, when these civil commotions were beginning to gather, he journeyed nearer to the sun, and in the soft air of the Mexican Gulf found respite, if not repose. There he was overtaken by that blast of war, which, like

"A violent cross wind from either coast,"

swept over the country. Escaping now from the menace of war in Florida, as he had already escaped from the menace of climate in Massachusetts, he traversed the valley of the Mississippi, and succeeded in reaching home. At the session of Congress called to sustain the Government he appeared to take his seat; but a hand was fastened upon him which could not be unloosed. Again he came to his duties here during the present session; for while the body was weak, his heart was strong. He often mourned his failing force, because it disabled him from speaking and acting at this crisis. He longed to be in the front rank. Yet he was not a cipher. He was a member of the Committee on Territories in the House of Representatives, and its Chair-

man[1] relates that this dying Representative was earnest to the last that his vote should be felt for Freedom. "Let me know when you wish my vote, and, though weak, I shall surely be with you," said the faithful son of Massachusetts. This is something for his tombstone; and I should fail in just loyalty to the dead, if I did not mention it here.

As a member of this Committee, he put his name to a report which became at once a political event. In the uneventful life of an invalid, who was here for a few weeks only, it should not be passed over in silence. By a resolution adopted on the 23d of December, 1861,[2] the Committee on Territories was instructed "to inquire into the legality and expediency of establishing Territorial Governments within the limits of the disloyal States or districts." After careful consideration of this momentous question, the Committee reported a bill to establish temporary provisional governments over the districts of country in rebellion against the United States.[3] This bill assumed two things, which, of course, cannot be called in question: first, that throughout the Rebel region the old loyal State Governments had ceased to exist, leaving no person in power there whom we could rightfully recognize; and, secondly, that the Constitution of the United States, notwithstanding all the efforts of Rebellion, was still the supreme law throughout this region, without a foot of earth or an inhabitant taken from its rightful jurisdiction. Assuming the *absence*

[1] Hon. James M. Ashley.

[2] On motion of Hon. William Vandever, of Iowa.

[3] Reported by Mr. Ashley, March 12, 1862, when the bill was read at length. Mr. Pendleton, after saying that it "ought to be entitled 'A Bill to dissolve the Union and abolish the Constitution of the United States,'" moved to lay it on the table, which was done, — Yeas 65, Nays 56.

of State Governments and the *presence* of the National Constitution, the bill undertook, through the exercise of Congressional jurisdiction, to supply a legitimate local government, with a governor, legislature, and court; but it expressly declared that "no act shall be passed, establishing, protecting, or recognizing the existence of Slavery; nor shall said temporary government, or any department thereof, sanction or declare the right of one man to property in another." In a succeeding section it was made the duty of the authorities "to establish schools for the moral and intellectual culture of all the inhabitants, and to provide by law for the attendance of all children over seven and under fourteen years of age not less than three months in each year." With a thrill of joyful assent Mr. Bailey united with the majority of the Committee in this bill. It was his last public act, almost his only public act in Congress, and certainly the most important of his public life. As a record of purpose and aspiration it will not be forgotten.

To such a measure he was instinctively moved by the strength of his convictions and his sense of the practical policy needed for the support of the Constitution. He had no indulgence for the Rebellion, and saw with clearness that it could be ended only by the removal of its single cause. His experience at the South added to his appreciation of the true character of Slavery, and increased his determination. He did not live to see this Rebellion subdued, but he has at least left his testimony behind. He has taught by what sign we are to conquer. He has shown the principle which must be enlisted. Better than an army is such a principle; for it is the breath of God.

Mr. Bailey was clear in understanding, as he was

pure in heart. His life was simple, and his manners unaffected. His, too, were all the household virtues which make a heaven of home, and he was bound to this world by a loving wife and an only child. He was happy in being spared to reach his own fireside. Sensible that death was approaching, he was unwilling to continue here among strangers, and, though feeble and failing, he was conveyed to Fitchburg, where, after a brief period among kindred and friends, he closed his life. His public place here is vacant, and so also is his public place in Massachusetts. But there are other places also vacant: in his home, in his business, and in his daily life among his neighbors, in that beautiful town scooped out of the wooded hills, where he was carried back to die.

I offer resolutions identical with those offered by myself, and adopted by the Senate, on the death of Robert Rantoul.

Resolved, unanimously, That the Senate mourns the death of Hon. GOLDSMITH F. BAILEY, late a member of the House of Representatives from Massachusetts, and tenders to his relatives a sincere sympathy in this afflicting bereavement.

Resolved, As a mark of respect to the memory of the deceased, that the Senate do now adjourn.

The resolutions were agreed to; and the Senate adjourned.

USE OF PARCHMENT IN LEGISLATIVE PROCEEDINGS.

RESOLUTION AND SPEECH IN THE SENATE, ON THE ENROLMENT OF BILLS, MAY 16, 1862.

DECEMBER 23, 1861, Mr. Sumner offered the following resolution, and said that he would call it up for consideration some day thereafter.

"*Resolved*, That the Committee on Enrolled Bills shall consider the expediency of changing the Joint Rules of the two Houses of Congress, so as no longer to require that bills which have passed both Houses shall be enrolled on parchment; but that they shall be simply copied in a fair hand on linen paper, and be thus preserved in the Department of State, instead of being preserved in cumbersome rolls of parchment."

May 16, 1862, the resolution was taken up for consideration.

MR. PRESIDENT, — There is a usage of Congress which must strike all coming here for the first time, whether as members or spectators. It is the usage, after bills have passed both Houses, of copying them on rolls of parchment, when they receive the signatures of the Speaker of the House, the President of the Senate, and the President of the United States. Under our rules this is called *enrolling*, although in England, where it originated, it was known, down to its recent abolition there, as *engrossing*.

I have said that it is calculated to arrest attention. This is because to most persons it is a novelty, although old in itself. On inquiry, I do not learn that it is con-

tinued in any of our States except Massachusetts. In the new States of the West it has never been known. The question which I now submit is, Whether it is wise for Congress to continue this embarrassing form, already discontinued, or never adopted, by the State Legislatures?

Among the Joint Rules of the two Houses is the following, entitled "Enrolled Bills."

"After *a bill* shall have passed both Houses, it shall be duly *enrolled* on parchment by the Clerk of the House of Representatives, or the Secretary of the Senate, as the bill may have *originated* in the one or the other House, before it shall be presented to the President of the United States."

This was adopted as early as 6th August, 1789. Shortly before this date, at the recommendation of Senators Morris, Carroll, Langdon, Read, and Lee, a joint resolution was passed, requiring the Secretary of the Senate and the Clerk of the House, within ten days after the passing of every Act of Congress, to authenticate printed copies thereof, and lodge them with the President.[1] In September, 1789, a statute was passed to provide for the safe keeping of the acts, records, and seal of the United States, by the first section of which the Department of Foreign Affairs was changed to the Department of State. The Secretary of the Department thus remodelled was made custodian of all bills, orders, resolutions, or votes of Congress approved by the President, or having become laws or taken effect without his approval, with directions to publish the same in the newspapers, to cause one printed copy to be

[1] Annals of Congress, 1st Cong. 1st Sess., col. 44, 420.

delivered to each Senator and Representative, and two printed copies, duly authenticated, to be sent to the Governor of each State, and to "carefully preserve the originals."[1] This latter service has been executed by binding the enrolled copies of the acts of each session in separate volumes, without rolling or folding the skins of parchment, and depositing them in a fire-proof vault, under the immediate charge of an officer of the State Department, known as Clerk of the Rolls.

The enrolment of bills requires special care, and sometimes even delays legislation. From the haste with which the transcription is often made and the amendments are embodied, errors naturally occur. Perhaps these cannot be entirely avoided by copies on paper. Indeed, nothing can supersede the necessity of great vigilance, whether paper or parchment be employed.

The main reason for enrolment on parchment, when first adopted by Congress, was English example. Technical phrases, tautologous terms, absurdities of law Latin and law French, all these, together with our jurisprudence, were borrowed directly from England, and with them came parchment, the use of which antedated these peculiarities. Of course it was before the manufacture of paper in England, which was not earlier than the reign of Henry the Seventh, and it was continued long after the manufacture had rendered it unnecessary.

In Antiquity other substances were employed; but among European nations in modern times, previous to the invention of paper, parchment prevailed. In England, every manuscript, every book, every deed, every

[1] Statutes at Large, Vol. I. p. 68.

indenture, every contract, every record, judicial or other, was on parchment. So, also, was Magna Charta, wrung from King John in 1215, and still exhibited as a venerable curiosity in the British Museum. It must have been the case with the statutes and proceedings of Parliament; for, in fact, there was little else on which they could be written. These proceedings, together with the statutes, constituted what were called the Rolls of Parliament, — *Rotuli Parliamentorum*, — and they were preserved apart, with other parchment records. There is a verse of Scripture which has been quoted as describing the place where they were kept: "Darius the king made a decree, and search was made in *the house of the rolls*, where the treasures were laid up." [1]

The durability of parchment is attested by the manuscripts which illumine the great libraries of Europe. Among the treasures of the Vatican is a Virgil of the fourth century, and in the National Library of Paris is a Prudentius of an early date, both in a condition to survive the structures in which they are preserved. Abbeys, convents, churches, built with pious skill, have crumbled to dust, while their parchments continue to defy the tooth of Time. But this peculiar durability, so important before the invention of printing, when copies were few, has played its part.

Parchment soon gave way to paper in judicial proceedings and records, probably from considerations of economy and convenience; but it continued longer in parliamentary proceedings. The Journals of the House of Lords, which have always been held to be public records, were formerly "recorded every day on rolls of

[1] Ezra, vi. 1.

parchment."[1] The original usage with regard to the Journals of the other House seems to have been different; for we find in 1621, the year after the sailing of our Pilgrim Fathers, an express order that the Journals of the House of Commons "shall be reviewed and recorded on rolls of parchment."[2] Notwithstanding the order, this usage does not appear to have prevailed with the Commons, and it was long ago discontinued by the Lords. But the statutes continued to be engrossed on parchment, and placed in the custody of the "Master of the Rolls."

According to English practice, engrossment took place after the report. But at last, in 1848, it was thought advisable to make a change. The whole subject occupied committees of both Houses, and finally of Parliament itself. Even at the cost of details which may be wearisome, I present the history of these proceedings, which will be interesting, at least, as showing the care which presided over this transition, and also a possible guide to us.

On the 4th of September, 1848, the day before the prorogation of Parliament, it was ordered in the House of Lords, —

"That the Clerk Assistant be directed, in communication with the proper authorities of the House of Commons, to take such preliminary steps as may be necessary, so as to enable the House, if it shall so think fit, at the commencement of the next session, to dispense with the present form of engrossing bills, and to transmit and to receive printed copies of the same."[3]

[1] May's Parliamentary Practice, or Treatise on the Law, Privileges, Proceedings, and Usage of Parliament (London, 1859), p. 228.

[2] Ibid.

[3] Journals of the House of Lords, Vol. LXXX. p. 867.

The Clerk Assistant, thus directed to report, was John George Shaw Lefevre, Esquire, brother of the accomplished Speaker of the House of Commons.

On the third day of the next session, February 6, 1849, the Lord Chancellor informed the House of Lords, —

"That the Clerk Assistant had prepared and laid on the table, in obedience to the resolutions of this House, a report of the result of his communication with the authorities of the House of Commons on the subject of dispensing with the present form of engrossing bills." [1]

A select committee to consider the proposed change, was appointed, consisting of the Lord Chancellor, Lord Privy Seal, Duke of Richmond, Earl of Shaftesbury, Lord Beaumont, and Lord Monteagle of Brandon.

It is probable that they adopted at once the suggestions of the Clerk Assistant, as, within a few hours after their appointed meeting, their Chairman, the Lord Chancellor, reported to the House of Lords, February 8, 1849, that the Committee had met and considered the subject-matter referred to them, and united in recommending, "That it is expedient to discontinue the present system of engrossing, and to alter the present system of enrolling bills"; and they reported provisions, in lieu thereof, to which I shall refer.

The House of Lords adopted the report, passed the resolutions, and ordered that they be communicated to the Commons at a conference, and their concurrence desired.[2]

On the 9th of February, managers of the conference were appointed. Those representing the House of Lords were the Lord Privy Seal, Earl Waldegrave, Earl Saint

[1] Journals of the House of Lords, Vol. LXXXI. p. 16.
[2] Ibid., pp. 18, 19.

Germans, Viscount Hawarden, Lord Bishop of Hereford, Lord Beaumont, and Lord Monteagle of Brandon. The managers representing the House of Commons were Sir George Grey, Sir Robert Peel, Sir Robert Harry Inglis, Mr. Herries, Mr. Wilson Patten, Mr. Bernal, Sir John Yarde Buller, the Earl of Lincoln, Mr. Attorney-General, the Earl of Arundel and Surrey, Mr. Thornely, Mr. Maitland, Mr. Hume, Mr. Mackenzie, the Judge Advocate, and Sir John Young.

Omitting other details, I come at once to the resolutions afterwards adopted in both Houses.

"1. That, in lieu of being engrossed, every bill shall be printed fair immediately after it shall have been passed in the House in which it originated, and that such fair printed bill shall be sent to the other House as the bill so passed, and shall be dealt with by that House and its officers in the same manner in which engrossed bills are now dealt with.

"2. That, when such bill shall have passed both Houses of Parliament, it shall be fair printed by the Queen's printer, who shall furnish a fair print thereof on vellum to the House of Lords before the royal assent, and likewise a duplicate of such fair print, also on vellum.

"3. That one of such fair prints of each bill shall be duly authenticated by the Clerk of the Parliaments, or other proper officer of the House of Lords, as the bill to which both Houses have agreed.

"4. That the royal assent shall be indorsed in the usual form on such fair print so authenticated, which shall be deposited in the Record Tower, in lieu of the present engrossment.

"5. That the copies promulgated in the first instance by the Queen's printer shall be impressions from the same form as the deposited copy.

"6. That for the present session this arrangement shall not apply to private bills, nor to local and personal bills, which last mentioned bills, intended to be brought in this session, have been for the most part already printed, in pursuance of the standing orders of the House of Commons.

"7. That the Master of the Rolls shall, upon being duly authorized in that behalf, receive, in lieu of the copies of public general acts as now enrolled, the herein before-mentioned duplicate fair print of each public general bill, to be held for the same purposes and subject to the same conditions for and upon which the enrolled acts are now received and held by him.

"8. That it is expedient, with a view to economy, convenience, and dispatch, and to the diminution of the chance of errors, that one printer should print the public general bills for both Houses; and that, inasmuch as the Queen's printer is, by virtue of his office, bound to print the acts, it would be advisable, for the attainment of the before-mentioned objects, that the Queen's printer should be employed by both Houses to print the public general bills." [1]

Later in the same session of Parliament, the House of Commons passed the following resolution, which was agreed to by the House of Lords on the 31st of July, 1849.

"That the arrangement contained in the resolutions agreed to by both Houses of Parliament on the 12th day of February last, relative to the engrossing and enrolling of bills, (except so much thereof as relates to the expediency of one printer printing the bills for both Houses,) shall in future sessions apply to local, personal, and private, as well as to public bills." [2]

[1] Journals of the House of Commons, Vol. CIV. p. 52.
[2] Journals of the House of Lords, Vol. LXXXI. pp. 588, 589.

Thus in England the old system of engrossing and enrolling has disappeared. It is true that the bill, in its last stage, is printed on vellum; but the ancient cumbersome proceeding is abolished.

I have referred especially to English practice, because ours was originally derived from it. But the example of a nation so truly enlightened as France may be properly adduced also. The ordinances of the kings of France were engrossed on parchment down to the reign of Louis the Fourteenth, when his great minister, Colbert, contented himself with having them copied in a fair hand on folio paper, and bound in large volumes. The voluminous ordinances of the Grand Monarch on the Government of Canada, and of the Mississippi Valley, then recently discovered, are still preserved in the *Archives de la Marine* at Paris, each one bearing the signature of the sovereign, and countersigned by his minister. Thus in France, even before the great changes of the Revolution, parchment was discarded, and I am not aware that it is now used either in judicial or legislative proceedings. The records and documents, all fairly copied on paper, are admirably preserved, untouched by time or damage of any kind, and in better condition than some of our own public documents written within the last ten years. I do not forget that the clerks of the last century wrote with carefully prepared ink on linen paper. Bad ink and cotton paper must, of course, be avoided, especially where metallic pens are employed to tear the surface and open the way for the deleterious fluid.

If disposed to follow the examples of England and France, and of our own States in their local Legisla-

tures, we shall make a change. Nor is there any reason of utility or convenience in favor of parchment. I know that a vellum page is a luxury, coveted always by the refined book-collector; but it has long since ceased to be anything else. Paper is good enough and durable enough for all practical purposes. Volumes of the fifteenth century, among the first fruits of the newly discovered art of printing, are found now in as good condition as when their paper was first blackened by types; and there are manuscripts, not merely on parchment, but also on paper, older than the discovery of America, in as good condition as the Journals of the Senate.

Even if paper were less permanent than parchment, the latter becomes entirely superfluous since the practice was established of printing the statutes under the supervision of the Government. It is well known that public statutes require no proof besides the printed statute-book.[1] This was an original principle of English law, which has been adopted and fortified among us. Professor Greenleaf, who is such authority on the Law of Evidence, thus exhibits the value of the printed copy: —

"It is the invariable course of the Legislatures of the several States, as well as of the United States, to have the laws and resolutions of each session printed by authority. Confidential persons are selected to compare the copies with the original rolls, and superintend the printing. The very object of this provision is to furnish the people with authentic copies; and, from their nature, *printed copies of this kind, either of public or private laws, are as much to be depended on* as the exemplification verified by an officer who is a keeper of the record." [2]

[1] Gilbert, Law of Evidence, Vol. I. p. 12.

[2] Greenleaf, Law of Evidence, Vol. I. § 480.

Summing up the whole case, we find that the present system has its origin in ancient usage, the reason of which has long since ceased; that there is no necessity for its continuance; that it is contrary to convenience; that it is contrary to the example of France, and even of England, whence it was derived; that it is contrary to the usage of our own States, in their legislative action; and that a change would do something, at least, to simplify our proceedings.

Paper is of all qualities, and of every degree of durability. Besides rags, there are many other substances out of which it is made, so that even the increasing demand meets a corresponding supply. It is always cheap, and entirely convenient. To reject it for parchment is as if we imitated the early Arabs, and inscribed our statutes on the shoulder-blades of sheep. The skin is less antediluvian than the bone, but both are out of place in our age.

Should the change be deemed advisable, it might be made by substituting the words "linen paper" for "parchment," in the sixth Joint Rule. This would be simple enough: but the phrases "engrossed" and "enrolled" would still remain in the rules, although the occasion for them had passed. In the British Parliament, the old form of question, "That this bill be engrossed," which always followed after the Committee of the Whole, is now dispensed with;[1] and it seems to me that we might do something to simplify our proceedings in this respect, also.

I have here a complete collection of bills, as printed, at their different stages in the two Houses of Parliament, as follows.

[1] May's Parliamentary Practice, p. 452.

Bill as delivered to each member of the House of Commons.

House copy of bill originating in the Commons.

Bill as presented by the Commons to the Lords, after passing the Commons.

Bill as delivered to each peer.

House copy of bill originating in the Lords.

Bill as presented by the Lords to the Commons, after passing the Lords.

Bill on vellum, as passed both Houses, and ready for the royal assent.

All these I shall, if he will allow me, hand over to the Chairman of the Committee on Enrolled Bills, who will do something, I trust, for the improvement of our rules in this respect.

The resolution was adopted, but no report was ever made by the Committee.